

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW MEXICO

3
4 UNITED STATES OF AMERICA,)

No. 14-CR-00129 WJ

5 Plaintiff,)

6 vs.)

Pete V. Domenici U.S. Courthouse
Bonito Courtroom

7 MICHAEL DAMEON BLACKBURN,)

Albuquerque, New Mexico

8 Defendant.)

Thursday, June 22, 2017

1:30 P.M.

9
10 TRANSCRIPT OF PROCEEDINGS
11 SENTENCING HEARING, PART 2
12 BEFORE THE HONORABLE WILLIAM P. JOHNSON
UNITED STATES DISTRICT JUDGE

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I N D E X

Page

ALLOCATION BY MRS. C.C. - A.M.'S ADOPTIVE MOTHER	5
SENTENCING	82
ARGUMENT BY MS. ONG FOR THE GOVERNMENT	82
ARGUMENT BY MS. KATZE FOR THE DEFENSE	89
RULING BY THE COURT	100

W I T N E S S

SUEANN KENNEY-NOZISKA

DIRECT EXAMINATION BY MS. ONG	16
VOIR DIRE EXAMINATION BY MS. KATZE	22
DIRECT EXAMINATION (Continued) BY MS. ONG	35
CROSS-EXAMINATION BY MS. KATZE	56
REDIRECT EXAMINATION BY MS. ONG	77

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1 (In Open Court at 1:48 P.M.)

2 THE COURT: Next, let me call United States vs.
3 Michael Blackburn, 14-CR-129.

4 would counsel enter their appearances for the record.

5 MS. ONG: Good afternoon, Your Honor. Marissa Ong on
6 behalf of the United States.

7 MS. HENDERSON: Good afternoon, Your Honor. Shammara
8 Henderson on behalf of the United States.

9 MS. KATZE: Margaret Katze for Mr. Blackburn.

10 THE COURT: All right. I know this is a hearing on
11 restitution and also sentencing. I had previously entered an
12 order making the findings on Defendant's correctly calculated
13 guideline sentence, and there was a lot of argument regarding
14 the sentence heard from the victim's parent, and also
15 Mr. Blackburn spoke. So as far as what remains to be done in
16 this case in terms of at this level, the District Court level,
17 is to proceed with this hearing on restitution and proceed to
18 sentencing. Is that right?

19 MS. ONG: That is correct, Your Honor. At the last
20 hearing, A.M.'s parents, who is the other victim in this
21 case -- we have M.M. and A.M. I believe that the Court heard
22 from M.M.'s adoptive parents. Today A.M.'s parents are here,
23 and A.M.'s mother would like the chance to allocute. So I
24 don't know if you want to do that now or after we have the --
25 the United States is planning on putting on evidence with

1 regard to restitution.

2 THE COURT: Ms. Katze? In other words, I would
3 agree, then, that it would be appropriate for allocution. But
4 anything else from the Defendant's standpoint?

5 MS. KATZE: I don't have an argument against A.M.'s
6 mother addressing the Court. I do want to -- maybe if we do
7 that first, then I would just like to address a couple of
8 issues on the witnesses that Ms. Ong, and we talked about this,
9 that she is going to call. I'd like to put on the record some
10 objections.

11 THE COURT: All right, that's fine. Then let's go
12 ahead and proceed with the allocution.

13 MS. ONG: And, Your Honor, just for purposes of the
14 record, both M.M. and A.M.'s parents don't want their names
15 made public. So for purposes of this hearing, we're just going
16 to refer to A.M.'s mother as C.C., and if it comes up with
17 regard to the restitution, M.M.'s mother as K.S.

18 THE COURT: Okay.

19 MS. KATZE: I understand they don't want to give
20 their names, but I note there are two people at the podium.
21 Just for purposes of the record, can we find a way to identify
22 them?

23 THE COURT: Why don't we do this. Do you want to do
24 a little sealed notice afterwards, where it's a sealed pleading
25 and it's not open to the public, but it identifies for purposes

1 of the record who the parents are?

2 MS. ONG: Sure. I'm happy to do that, Your Honor. I
3 don't know if anyone from the press is here. I know that last
4 time -- I just want to make sure that they're not publishing
5 anyone's names. And I think it's J.C. and C.C. Only C.C. is
6 planning on talking.

7 THE COURT: Okay.

8 MRS. C.C.: Hello.

9 THE COURT: You may go ahead and proceed, ma'am.

10 MRS. C.C.: Okay. I'm nervous. I've never spoke.

11 I am the adoptive mom of A.M., and since we have had
12 him -- it's been 18 months since he has lived with us. We
13 actually had to go through a lot of extra training just to have
14 him, because of how severe he is. We can't -- I don't know. I
15 guess -- we couldn't come to the last one because we don't have
16 a sitter for him. Nobody can watch him. He's triggered by any
17 male around. So if somebody is not trained in trauma, then
18 nobody can watch him. I have older daughters that actually
19 help with it, and they're actually trained. But with him, he's
20 actually not allowed to attend kindergarten without an I.E.P
21 stating that we have to have two trained trauma people to watch
22 him. I'm sorry.

23 He has nightmares. He was in preschool and his
24 teachers asked the kids all to draw pictures, and he can't draw
25 without drawing his trauma. So he says, here's Uncle Michael

1 laying on me, here's Uncle Michael in the bathroom. And he
2 shows it to his classroom. So they had to stop making the kids
3 draw in the classroom.

4 Everything they do, they -- he goes out on the
5 playground, and they have to watch him because he will expose
6 himself. He says, "This is what Uncle Michael did to me." And
7 everything goes back to Uncle Michael.

8 He does remember his birth parents very well. But
9 everything comes back to him. If he sees a man with any kind
10 of facial hair, it triggers him. He hides. He'll self-harm
11 himself. We get him to where he's stable for a week, and then
12 as soon as he's around a boy that's bigger than him, it's back
13 to square one with nightmares and trying to run away.

14 The thing that's just the worst is, he can't even go
15 to kindergarten. They're just terrified to have him there,
16 because there's males around and there can't be a male teacher.
17 The boys in his classroom, we did not want him to victimize
18 them, because he has no idea, which we're trying to teach him.

19 He's extremely smart. But everything he remembers is
20 all the trauma, and he remembers every single detail. But the
21 teachers can't let him draw in the classroom anymore, at all,
22 because that's his mind, where it goes to. That's how it helps
23 him, is drawing out what happened to him, and so he goes into
24 detail. So he's left out of pretty much everything.

25 And we can't have anymore -- like, we can't have a

1 lot of gatherings because of our family. We can't have males
2 around him, because he'll have nightmares for weeks if somebody
3 touches his shoulder or talks to him. He has weeks where he
4 does okay as long as he's around mostly females and people that
5 are smaller than him, but it's -- he's extremely traumatized,
6 and he remembers every single thing. He always remembers, and
7 he's terrified. He's so scared that he's going to come get
8 him, he's going to hurt him.

9 So, that's all.

10 THE COURT: Do you take him to therapy?

11 MRS. C.C.: He is actually in five different
12 therapies. He's in Sand Tray. He has occupational therapy.
13 He has a psychiatrist. He goes to Attachment Healing. And we
14 have somebody coming to the house, and we have somebody
15 training all the staff at any school he goes to. And, then,
16 we're actually in a home school, but they don't recommend that,
17 because we're trying to bring him out in public. But he meets
18 every week with all of his therapists, so it's just nonstop,
19 constant therapy appointments.

20 They can't -- a lot of the medication -- they tried
21 giving him medication. They have to give him medication to
22 sleep. He will not sleep without it. He has too many
23 nightmares. And then we get him doing really well, and as soon
24 as he comes in contact with a male or somebody that represents
25 or looks like Michael, then he will have nightmares all night

1 and stop sleeping again. It's another whole route.

2 But he does do a lot of therapies, and we're
3 trying -- they're actually recommending something even bigger
4 than what they can -- most people are almost stumped on what to
5 do with him, because his trauma, he remembers everything. And
6 so -- and his IQ is extremely high, so he's very smart.

7 THE COURT: Are the therapists indicating to you that
8 he's going to be in therapy -- that it's going to be a lifelong
9 process for him?

10 MRS. C.C.: Oh, yeah. Yes. And right now, we're
11 doing -- we have to do tiny, little baby steps, just basic
12 steps with him to get him where he feels safe. We're trying to
13 get him to attach correctly and not entertain. He loves to
14 entertain males, because that's what he thinks he needs to do.
15 You see him dancing and doing stuff that most children, you
16 know, shouldn't do, and that's how he thinks he's going to be
17 safe that way. So we're trying to teach him how to attach
18 correctly and how to feel safe, and we're doing little, tiny
19 baby steps. Every single therapy, we're working on it. So,
20 that's all.

21 Oh, yes. I am one of the biggest people to forgive,
22 but it's not my place to forgive. It's my son's. And I don't
23 feel comfortable with having him out on the streets. I have my
24 own family, we have a lot of children, and to know that
25 somebody like that could hurt them or my child again -- I just

1 want him put away as long as possible.

2 THE COURT: I think you indicated you and your
3 husband adopted?

4 MRS. C.C.: Yes.

5 THE COURT: Well, you have to be certainly very
6 commended for that.

7 Is there anything else that you wanted to state?

8 MRS. C.C.: No, I think I'm good. Thank you.

9 THE COURT: Thank you.

10 Ms. Katze, did you want to state the objections on
11 the record before we proceed with restitution?

12 MS. KATZE: Yes, Your Honor. And Ms. Ong can correct
13 me if I'm wrong, but I think she was intending to call M.M.'s
14 mother to swear to, or certify the expenses or letters that
15 have already been submitted to the Court. I guess I would
16 state that if that's the evidence that's going to be -- if
17 that's the evidence that has already been presented, and
18 according to Ms. Ong there's no additional evidence with
19 respect to that, I think it would be our position that that
20 matter has been submitted and the Court has that evidence, and
21 the Court can review that evidence with all the rest of the
22 evidence to make a determination on it.

23 There's not additional evidence, so I guess I would
24 object to any further testimony or certifying to something
25 that's already been submitted and is before the Court. That's

1 one issue.

2 The other issue is that I understand the Government
3 wants to call Ms. Kenney-Noziska, who is a social worker.
4 Again, it's my understanding that the purpose for calling her
5 is to call her as -- she has some expertise in the field, and
6 it's the Government's hope, I am guessing, that she will be
7 able to testify to the length of therapy or the cost of
8 therapy.

9 I would object to her being called as an expert in
10 that testimony, because she has never met the children, she's
11 never evaluated the children, she has never observed the
12 children, she's never treated the children. And I think
13 regardless of the fact that the Court granted the Government's
14 request for her to have access to some court documents when I
15 was out of the office on medical leave, that's not sufficient
16 for her to be able to offer the Court an opinion on how much
17 treatment an individual would need, how much that would cost,
18 and for how long. So I don't think that's an appropriate
19 person.

20 I understand the Government has the burden of showing
21 by a preponderance what that cost of restitution would be, and
22 under Paroline that Mr. Blackburn is the proximate cause of all
23 of that, but I think that a social worker who has had no
24 contact whatsoever with the victims and has no connection to
25 the case, other than having looked at some documents, that that

1 is not a legitimate expert to be called at this time, and I
2 would object to her testimony.

3 THE COURT: Do you wish to respond?

4 MS. ONG: Yes, Your Honor, just briefly.

5 As the Court is aware, we do bear the burden of
6 proving by a preponderance. I think that Ms. Kenney -- her CV
7 has been submitted both to the Court and to defense counsel. I
8 do plan on going through her background. I think once the
9 Court hears all of her background, the Court is not going to
10 have any problems qualifying her as an expert.

11 we're going to be asking the Court to qualify her as
12 an expert in childhood trauma. This is done routinely
13 throughout the country. There are often situations where the
14 Court does not have available to it someone who has actually
15 evaluated defendants, and so the way that we are able to meet
16 our burden is by calling someone who is in the field who has
17 experience in the area to review the restitution requests that
18 are made. And I believe that what she is going to say is that,
19 you know, the documents that she's reviewed comport with the
20 numbers in this case.

21 I think that it's helpful to the Court. So, you
22 know, Ms. Katze is more than welcome to voir dire the witness
23 after I've laid the foundation, but I think that it's perfectly
24 proper to call her in this context.

25 with regard to Ms. Katze's first response, you know,

1 K.S., M.M.'s mother, she's not really wanting to testify. The
2 reason why I was planning on actually calling her as a witness
3 is because in one of the pleadings, Ms. Katze challenged the
4 numbers that she submitted to the Court and basically said, oh,
5 these are just unsworn statements that are submitted, the Court
6 shouldn't rely on them. And I believe at the last status
7 conference, Ms. Katze also made reference to being able to
8 cross-examine her on some of the documents.

9 So the only purpose of calling her is to authenticate
10 the documents that she provided to Probation, and I think that
11 it will make the record better when it goes up on appeal if she
12 has actually testified under oath. And Ms. Katze is welcome to
13 cross-examine her.

14 THE COURT: why don't you do it this way. why don't
15 you make a tender. And then if Ms. Katze wishes to
16 cross-examine the mother regarding what's in the tender, then
17 she has that option.

18 MS. KATZE: Your Honor, if I may, we're not
19 questioning the authenticity of the request, it's more the
20 applicability, or whether it falls under the statute, in the
21 case of the interpreted statute.

22 So, I mean, she can go ahead and do that. That's
23 fine. Your idea, that's fine. I just want to make clear that
24 I'm not alleging that she's making up receipts, or making up
25 numbers. we're questioning the legitimacy of them as

1 restitution, not that she's --

2 THE COURT: Okay.

3 MS. ONG: And I think as long as the record is clear,
4 that she's waiving any type of challenge regarding that on
5 appeal, she's not going to challenge the authenticity of these
6 documents, she's not going to try to say later on that the
7 paystubs that were submitted by K.S. are defective in some way
8 because they weren't properly authenticated, then I have no
9 problem moving forward.

10 MS. KATZE: I feel like it's a sufficiency issue, not
11 an authentication issue.

12 THE COURT: You're not taking issue with the amount
13 of the request, or what the witness would testify as far as
14 expenses that she's incurred, you're saying that it is not the
15 type of expense that falls within the restitution statute for
16 an award of restitution? Is that --

17 MS. KATZE: I am taking issue with the amount and
18 that it doesn't fall within the statute. I am not -- I will
19 not argue that those are falsified paystubs. That is not an
20 argument that we will make. It's whether or not it is an
21 appropriate or applicable amount under the statute, and the
22 case law interpreting the statute. I am not questioning the
23 authentication.

24 MS. ONG: And I would, just for purposes of the
25 record, note in Document 84 on Page 4, that is where Ms. Katze

1 basically said -- she made a challenge to our Exhibit 2, which
2 laid out a list of expenses, and said that the Court shouldn't
3 consider it because they're unsworn to.

4 So as long as she's now saying that she doesn't have
5 any challenge to the fact that the amounts that K.S. submitted
6 are not sworn to --

7 MS. KATZE: Your Honor, yes, I'll withdraw my
8 objection that they weren't sworn to. That does not mean that
9 I won't be able to argue that they are not justified or
10 sufficient or anything. I will withdraw my objection as
11 correctly pointed out, that I objected to it not being sworn
12 to.

13 THE COURT: Does that satisfy the United States?

14 MS. ONG: It does, Your Honor. I would -- if the
15 Court is okay with it, I just want to briefly kind of go
16 through what our position on restitution is, because it has
17 changed.

18 At one point, we didn't have any documentation from
19 A.M.'s parents, so I'd just like to give a brief overview to
20 the Court before I call my first witness.

21 THE COURT: That's fine.

22 MS. ONG: As the Court is well aware, we have to
23 prove restitution by a preponderance. The ultimate issue here
24 in this case is going to be causation. The Tenth Circuit has
25 said that causation is a factual issue for this Court to

1 resolve. That's cited in our briefs.

2 when this does go up on appeal, this Court's factual
3 findings are going to be reviewed for clear error, and so we
4 are asking the Court, with regard to any restitution order that
5 is put in place, that the Court make specific factual findings
6 that the Defendant was, in fact, the proximate cause of the
7 loss that we're requesting.

8 Just so that we're clear, we are now withdrawing our
9 request for any expenses related to M.M.'s education. So our
10 restitution request now comports in line with Probation's
11 assessment, which is laid out on Page 2 of the 4th Addendum,
12 which is Document 96. We're basically asking for \$286,800 for
13 M.M. This includes K.S.'s lost wages, costs for therapy, and
14 costs for psychiatry. With regard to A.M., we are requesting
15 \$144,000, and that is with regard to his psychotherapy and
16 psychiatry costs that he is going to incur.

17 So, just so it's clear, the only restitution that
18 we're seeking is the restitution that Probation laid out. They
19 have a nice little chart that clearly identifies it. And I
20 think that's it.

21 THE COURT: Okay. Why don't you call the witness and
22 go ahead. I'll let you voir dire after the witness takes the
23 stand and I hear her training and background.

24 MS. ONG: The United States calls Ms. Sueann
25 Kenney-Noziska.

1 MR. GARCIA: Please raise your right hand, ma'am.

2 (SUEANN KENNEY-NOZISKA, GOVERNMENT WITNESS, SWORN)

3 MR. GARCIA: Please have a seat and state your full
4 name, and please spell your last name.

5 THE WITNESS: My first name is Sueann, and my last
6 name is Kenney-Noziska. It's spelled K-e-n-n-e-y hyphen
7 N-o-z-i-s-k-a.

8 DIRECT EXAMINATION

9 BY MS. ONG:

10 Q. Good afternoon. For purposes of the hearing, I'm going to
11 refer to you as Ms. Kenney. Is that all right with you?

12 A. Yes.

13 Q. All right. Ms. Kenney, I wanted to go through some of
14 your background. I know that you have a lot of experience in
15 the mental health field, but I want to start with your
16 education. Can you please tell me about whatever degrees you
17 currently hold?

18 A. I have my bachelor's degree in psychology that I earned
19 from the University of South Dakota. I have a master's in
20 social work that I obtained from San Diego State University. I
21 have a specialized Certificate in Play Therapy which I received
22 from the University of California in San Diego. And I also
23 possess clinical licenses to practice as at psychotherapist, as
24 a clinical social worker, in the state of New Mexico, in the
25 state of California, and in the state of South Dakota.

1 Q. All right. And can you break down for me -- you said that
2 you have a specialized certificate. Can you tell me what that
3 is and what kind of training you have to undergo in order to
4 receive that?

5 A. So, the specialized Certificate in Play Therapy allowed me
6 the opportunity to get education, continuing education,
7 specific to working with very young children using a modality
8 of therapy called Play Therapy. That certificate was 150 hours
9 of coursework. And then I used that, in addition with my
10 clinical supervision, to then become a Registered Play
11 Therapist Supervisor, which is a secondary credential. So
12 underneath my license as a clinical social worker, it's a
13 secondary credential that recognizes my expertise as a play
14 therapist when I'm working with children, adolescents and their
15 families.

16 Q. You testified to some of the licenses that you hold as a
17 clinical worker. Can you go into detail about those and what
18 you had to undergo in order to receive those?

19 A. In general, the licensing requirements, in terms of your
20 education and your supervision and your number of hours, is
21 pretty consistent across the states. So it required about
22 3,000 hours of clinical experience where I was supervised, and
23 it also required that I have a master's degree, and then I had
24 to pass licensing exams in the different areas. California had
25 its own licensing exam. It was both a written exam, and then I

1 had to go before an oral board and respond to questions about a
2 case. In New Mexico and in South Dakota, it's a National
3 Social Work Licensing Exam.

4 Q. And what does that license allow you to do?

5 A. It allows me to practice independently as a therapist. So
6 it means that I have the ability to complete psychosocial
7 diagnostic assessments on individuals, that I have the ability
8 to form treatment plans, and then to engage in therapy to help
9 people meet those treatment goals.

10 Q. Can you tell me a little bit about your clinical
11 experience?

12 A. I have been doing clinical social work since about 1998.
13 So actually being a therapist since 1998. Before that, I
14 worked in the field doing other things. I worked for Child
15 Protective Services. I worked in a domestic violence shelter.
16 I worked in a residential treatment center.

17 And then after I received my master's degree, I started
18 working as a therapist. I worked for the Department of Mental
19 Health in Southern California for ten years. The scope of the
20 work that I did was with the most severely and traumatized
21 abused and neglected children and teens in the city that I was
22 working in.

23 In 2008, I relocated to Las Cruces, New Mexico, and opened
24 my private practice. I work exclusively with traumatized kids
25 and teens, ages 2 up to age 18.

1 Q. And are you published?

2 A. I am published.

3 Q. Can you tell me about some of your publications?

4 A. I have different publications probably dating back to the
5 early to mid 2000s. Some of them are on using play therapy in
6 treatment with children, but the bulk of them are on working
7 with kids that have been sexually abused. I wrote a
8 publication that was utilized to help play therapists
9 understand the sexual abuse literature and how to apply that to
10 treatment.

11 I have written a chapter in an edited book that actually
12 talked about using a strength-based approach in treatment with
13 abused and traumatized children. And then as recently as 2015,
14 I have a chapter in an edited book, and it's on working with
15 sexually abused children and their families.

16 Q. Do you do any trainings?

17 A. Yes.

18 Q. Can you tell me about some of the trainings that you
19 conduct?

20 A. I have been brought in and hired to be a presenter in a
21 training, and a trainer, across the United States as well as
22 internationally. I've presented in Hong Kong, in Tokyo, in
23 London. I present at most of the major child abuse conferences
24 throughout the United States.

25 So, for example, the National Child Abuse Symposium, which

1 is in Huntsville, Alabama; for the Child Abuse and Family
2 Violence Summit in Oregon; for the Crimes Against Children
3 Conference, which is in Dallas. So I'm brought in to either do
4 half-day trainings, full-day trainings, or week-long trainings
5 to teach other therapists how to work with sexually traumatized
6 and abused children.

7 Q. Are you familiar with the National Center for Missing &
8 Exploited Children?

9 A. Yes, I am.

10 Q. Do you work in conjunction with them at all?

11 A. I do.

12 Q. Can you explain what that entails?

13 A. Through NCMEC, the National Center for Missing & Exploited
14 Children, they actually have providers that they select
15 throughout the United States that they work with when there are
16 child abduction cases or missing children cases.

17 A couple of years ago, one of their employees was sitting
18 in the audience that I was presenting at, and when she returned
19 to NCMEC, she requested that they reach out to me so that I
20 could become one of their providers that provides consultation.
21 So they brought me in to actually obtain in-depth training at
22 NCMEC on working with sexually exploited children, children who
23 are victims of sexual abuse imagery, also known as child
24 pornography, and then I'm available to provide consultation on
25 cases.

1 Q. Can you tell me about your experience with the Child
2 Advocacy Center?

3 A. In July of 2015, our community in Las Cruces received some
4 funding to open a full Children's Advocacy Center. That's the
5 best practice for intervening with child abuse cases. It's
6 where we conduct forensic interviews, we can do the forensic
7 medical exam there, we have law enforcement, CYFD, people from
8 the District Attorney's office that can be co-housed there, and
9 then there's a mental health component where we actually do
10 assessments and treatment.

11 The CAC, or Children's Advocacy Center, brought me on
12 board to help open that mental health component and set that up
13 so that it met the standards for treatment across the United
14 States, and also so that it met the scope of the grant. So I
15 assumed the position of clinical director of our CAC, and I did
16 that from April 1st of 2016 until April 1st of 2017.

17 Q. How many years -- I know you testified that you began
18 actually treating patients in 1998. Is that right?

19 A. That's correct.

20 Q. And have you treated patients throughout that entire
21 timeframe?

22 A. Yes.

23 Q. Have you ever treated -- have you ever had any clients who
24 were victims of child pornography offenses?

25 A. Yes.

1 Q. Are you familiar with the, I guess, payments, the kind of
2 standard payments that each session would cost on average in
3 New Mexico for a certain type of treatment?

4 A. Yes.

5 Q. Let me see here. Have you ever been recognized as an
6 expert in court before?

7 A. Yes.

8 Q. Can you tell me about that?

9 A. I have been recognized as an expert in court in both
10 criminal cases involving childhood sexual abuse or childhood
11 trauma, and then also in family court for the Children, Youth
12 and Families Department.

13 MS. ONG: Your Honor, at this time I would move to
14 qualify Ms. Kenney as an expert in child trauma.

15 MS. KATZE: Your Honor, I'll voir dire.

16 THE COURT: Go ahead.

17 VOIR DIRE EXAMINATION

18 BY MS. KATZE:

19 Q. Ms. Kenney, does the social work field recognize
20 specialties?

21 A. Yes.

22 Q. How is that recognized? Do you get certified or licensed?

23 A. You get licensed, and there's different layers of
24 certification. You can -- a person can get their master's in
25 social work and work in different capacities without getting

1 any kind of clinical license, or even without getting -- I
2 think in New Mexico they're called LMSWs, which is Licensed
3 Master's in Social Work. So there's different levels that you
4 can then use to specialize.

5 Q. Here is my question. I have a master's in social work,
6 also, and I just wasn't aware -- like, for example, I know on
7 your resumé, you have a certificate, a specialized Certificate
8 In Play Therapy. Right?

9 A. Yes.

10 Q. And I know sometimes like in the legal community, there
11 are certain tests that lawyers can take, and in certain
12 jurisdictions they can be recognized as a specialist in labor
13 law, or a specialist in criminal law.

14 So I'm just wondering, in the social work field, is there
15 some kind of recognition that you would be an expert in
16 childhood trauma work? Is there some kind of a specialization
17 process? Is there something other than -- like, here you went
18 to a particular program where you were certified and you got a
19 specialized certification. I don't know, was that clear?

20 A. I think it's clear. I'll try to answer what I think
21 you're asking.

22 You can get certified for certain trainings. Like EMDR
23 Eye Movement Desensitization and Reprocessing, and then that
24 comes with a certification that then allows you to use EMDR.

25 I know that there are trauma certificates that are

1 available. There is one through TLC, which is the Trauma and
2 Learning Center. I did not go through their program. So there
3 are other specializations that you can get as a social worker.

4 Q. And then can a social worker advertise themselves as a
5 specialist in an area? Is that just something you can call
6 yourself, or do you have to somehow be authorized by like the
7 National Association of Social Workers? Can you just say, I,
8 Ms. Kenney, am a specialist expert in child sexual abuse trauma
9 work?

10 A. It doesn't have to be approved by the NASW, the National
11 Association for Social Workers, but ethically, I'm not allowed
12 to misrepresent the work that I do. So I'm not allowed to say
13 that I specialize in something if I'm not able to show that I
14 actually specialize in it.

15 Q. Okay. And so let me -- so it would be fair to say that
16 you don't have a certificate or a -- well, we'll say a
17 certificate or a license in child sexual assault?

18 A. No.

19 Q. At the end of your direct testimony, Ms. Ong was asking if
20 you had been an expert before, been qualified as an expert.

21 A. Yes.

22 Q. And you said, yes, and you said in criminal cases and in
23 family court cases.

24 A. Yes.

25 Q. And so, how many criminal cases?

1 A. I don't have the exact number.

2 Q. More or less.

3 A. Twenty-five to thirty.

4 Q. Okay. And were those in State court or Federal court?

5 A. State court.

6 Q. And in those 25 to 30 cases, did you testify for the
7 prosecution or the defense?

8 A. In all but one, I testified for the prosecution. In one
9 case, I testified for the defense.

10 Q. And in the case where you testified for the defense, were
11 you testifying that a child who had claimed to be sexually
12 assaulted, in your opinion, you thought had not been?

13 A. No. I can't even testify to whether or not a child has or
14 has not been sexually assaulted. I honestly am not -- I still
15 do not understand why they called me as an expert. What I
16 testified to was the dynamics of sexual abuse and why
17 disclosures are delayed, and why disclosures come out in bits
18 and pieces.

19 Q. Okay. That was your defense testimony?

20 A. Yes.

21 Q. Okay. And then in all the other cases, it was for the
22 Government?

23 A. Yes.

24 Q. So this is your first time testifying federally?

25 A. Yes, it is.

1 Q. And is the Government paying you to testify today?

2 A. Yes.

3 Q. And they had you review records, as well; is that correct?

4 A. Yes.

5 Q. So how many hours are you billing the Government for your
6 overall work, your testimony and your review, and how much do
7 you charge them?

8 A. I do not have my contract in front of me, so -- and I
9 haven't billed anything yet, so I can't answer that question.
10 Unless somebody has a copy of my contract.

11 Q. Okay. So you don't know what you charged them when they
12 asked if you would be willing to work for the Government?

13 A. I can ballpark what I believe my fees are. When I do
14 record reviews, it's \$100 an hour. When I do face-to-face
15 meetings or pretrial interviews, it's \$200 an hour. And then
16 actual time on the stand is \$300 an hour.

17 Q. And then you had to travel from Las Cruces?

18 A. Yes.

19 Q. I assume the Government is paying you to travel here?

20 A. Yes.

21 Q. Okay. So, you mentioned when you were going through your
22 fees face-to-face.

23 A. Yes.

24 Q. And I guess, would that be evaluating an individual or
25 treatment of an individual? Is that the -- when you said

1 face-to-face, \$200 an hour.

2 A. No. That is when I meet with, for example, the attorney.

3 Q. The lawyer?

4 A. Yeah.

5 Q. Okay. You indicated on direct exam that you do see
6 patients or clients, that you actually treat people; is that
7 right?

8 A. Yes.

9 Q. Because I know you talked about the trainings, and I
10 watched a couple of your YouTube videos. But with respect to
11 actually treating people, you treat children?

12 A. Yes.

13 Q. And so if somebody comes in and tells you that a parent or
14 a guardian or the Court, or whatever, says, we suspect that
15 this child has been sexually assaulted, what's the first thing
16 you do? Do you do some kind of intake, some kind of
17 evaluation?

18 A. Yes. The first step is an assessment.

19 Q. And what does that involve?

20 A. It involves getting a packet completed by the caregiver
21 regarding the history, the full history. So developmental
22 history, academic history, mental health history. It also
23 involves using standardized measures. For example, something
24 such as the Trauma Symptom Checklist or the Trauma Symptom
25 Checklist for Young Children. And then a face-to-face clinical

1 interview.

2 Q. Okay. So it sounds pretty thorough, an in-depth --

3 A. Yes.

4 Q. -- face-to-face meeting. So in this particular case with
5 respect to A.M. and M.M., the victims, you did not do that
6 assessment --

7 A. No, I did not.

8 Q. -- is that right? In fact, you've never met them?

9 A. No.

10 Q. Never seen them?

11 A. No.

12 Q. And so I think it's fair to say, then, that you haven't
13 observed them?

14 A. That's correct.

15 Q. Or treated them?

16 A. That's correct.

17 Q. So you're being asked, or you were asked by the Government
18 to come to court and give an opinion on how much treatment -- I
19 guess I'm assuming from Ms. Ong's question that she would
20 intend to ask you what's the average fee for treatment. I'm
21 assuming that's one of the things that she's asked you to talk
22 about?

23 A. Yes.

24 Q. And the other, I would assume, in the formula is how many
25 hours -- how many years one would expect to have treatment?

1 A. Yes.

2 Q. And she's asking you to do that on two individuals, two
3 victims, who you don't know at all?

4 A. That's correct.

5 Q. You've reviewed some documents that the Court allowed you
6 to see?

7 A. That's correct.

8 Q. But it sounds like compared to what you usually look at,
9 it's fairly limited?

10 A. It depends on what I'm -- what my role is. If I'm the
11 clinician, I would do a full, thorough assessment. When I'm
12 called as an expert, I may not be testifying about my
13 individual child's treatment. I might be just educating the
14 jury or the Court on sexual abuse dynamics, or what the
15 research says the long-term impact of adverse childhood
16 experiences is.

17 So in those situations, the fact that I'm not the
18 therapist allows me to be a little less -- or impartial,
19 because as a therapist, typically you advocate for your client,
20 whereas when they bring me in as an expert for cases that
21 aren't mine, it allows me to speak objectively to what we know
22 about trauma and the impact on individuals.

23 Q. How many clients have you actually treated, would you say,
24 since 1998 when you got out of school?

25 A. Thousands.

1 Q. Thousands of people?

2 A. Yes.

3 Q. Sounds like the majority of them may be children and
4 adolescents?

5 A. Yes.

6 Q. And I would assume that it's a good practice to treat each
7 one like an individual; right?

8 A. Yes.

9 Q. There's no cookie-cutter formula?

10 A. That's correct.

11 Q. And people, not only in your evaluation, but people
12 respond differently to treatment; correct?

13 A. That's correct.

14 Q. And if you're a way better therapist than I am, our
15 results could be different?

16 A. That's correct.

17 Q. And even before that, because it's an imperfect science,
18 we might both evaluate an individual very differently --

19 A. That's also correct.

20 Q. -- correct? And think that one treatment is more
21 appropriate than another type of treatment?

22 A. Yes.

23 Q. So when you do the actual treatment -- you explained the
24 assessment. If your relationship is going to be ongoing at
25 that point, you then tailor a treatment to that individual?

1 A. Yes.

2 MS. KATZE: Your Honor, may I have just a moment,
3 please?

4 THE COURT: Sure.

5 MS. KATZE: Your Honor, I have no further questions
6 with respect to voir diring the witness at this time. If this
7 is the appropriate time to do so, I would renew my objection,
8 if I may be heard briefly on that.

9 THE COURT: Yes, briefly.

10 MS. KATZE: I absolutely recognize that Ms. Kenney
11 has a lot of experience, is published, is educated. I don't
12 question that. What I question is her ability to offer
13 relevant expertise in this case.

14 As she conceded, everybody is an individual. Every
15 child is an individual. And the children have actually been
16 treated, and continue to be treated by people who have done
17 exactly the assessment that Ms. Kenney suggested that she, as
18 an expert, would do. And as she explained, she would tailor
19 individual treatment and therapy to that person and how
20 different people respond.

21 I recognize that based on her experience, she could
22 look at some papers and give us an idea. I just don't think
23 that that's going to be enough for the Government to meet their
24 burden of proving the restitution, given her complete lack of
25 connection to the case, to either of the children. So I would

1 re-assert my objection to Ms. Kenney testifying as an expert in
2 this context. Thank you.

3 THE COURT: I've got a couple of questions. The
4 first one is, the answer is obvious, but I'm not sure you were
5 previously asked this. If you were, then I just overlooked it.

6 In a question by Ms. Ong, you had testified that you
7 have treated children who were the victims of child
8 pornography. Is that right?

9 THE WITNESS: Yes, that's correct.

10 THE COURT: And along those same lines, would I be
11 correct in assuming that you had extensive experience also
12 treating children who have been the victims of hands-on actual
13 sexual abuse and sexual assault?

14 THE WITNESS: Yes.

15 THE COURT: You have a private clinical practice?

16 THE WITNESS: Yes.

17 THE COURT: And you indicated that you are billing --
18 you charge professionally for your time; correct?

19 THE WITNESS: Yes.

20 THE COURT: Along those same lines, are you familiar
21 with the fees that are charged by therapists, professionals in
22 your profession, what they typically charge as far as fees and
23 what's considered reasonable as far as those type of treatment
24 fees for services?

25 THE WITNESS: Yes, yes.

1 THE COURT: Let's see. There was something else I
2 was going to ask you.

3 Now, it's obvious that you are not treating the child
4 victims in this case.

5 THE WITNESS: That's correct.

6 THE COURT: Do you have a general idea or an overview
7 of the abuse that these two children, toddlers at the time,
8 went through?

9 THE WITNESS: Yes.

10 THE COURT: And just, if you would -- did the United
11 States provide you with some kind of overview or documents so
12 that you were able to inform yourself on the abuse that these
13 children went through?

14 THE WITNESS: Yes.

15 THE COURT: And what were either the documents or the
16 information?

17 MS. ONG: Your Honor, I was planning on going through
18 those specifically. I was going to wait until she was
19 qualified as an expert. I just wanted the Court to be aware
20 that I'm planning on having her lay out everything that she
21 reviewed.

22 THE COURT: That's fine.

23 Then let me note that the Rules of Evidence -- this
24 is a post-conviction matter. It's a sentencing. It relates to
25 restitution. The Rules of Evidence don't apply in this type of

1 hearing, but they are informative and illustrative for purposes
2 of the ruling that I'm required to make.

3 Let me start with Evidence Rule 702. It's Testimony
4 by Expert Witnesses. And it starts off: "A witness who is
5 qualified as an expert by knowledge, skill, experience,
6 training or education may testify in the form of an opinion or
7 otherwise." Let me just stop there.

8 Obviously the witness, in terms of her field as a
9 clinical psychologist, she's licensed in three states and she
10 has extensive experience in a clinical setting treating
11 childhood victims, not only of child pornography, but actually
12 of sexual assault, abusive sexual contact. So she is certainly
13 extremely well qualified to offer expert opinion in the area of
14 childhood trauma.

15 Now, part of Rule 702 says: "If the expert's
16 scientific, technical, or otherwise specialized knowledge will
17 help the trier of fact to understand the evidence or to
18 determine a fact in issue." Now, this is not a jury trial, so
19 I'm essentially the trier of fact, and if we were dealing with
20 the issue of what is a reasonable attorney's fee, I wouldn't
21 need any expert testimony, because I have some familiarity from
22 the standpoint I was once in private practice, and then I've
23 got almost 23 years of judicial experience having to deal with
24 attorney's fees and reasonableness of attorney's fees.

25 I'm not a psychologist. I'm not a clinical -- I

1 don't practice in a clinical setting. So I'm not particularly
2 familiar with the fees and the reasonableness of charges that
3 professionals such as Ms. Kenney charge for therapy services.
4 So this type of testimony from her will assist me in arriving
5 at a decision on this restitution claim by the United States,
6 as well as the objections that have been raised to it by the
7 Defendant. So clearly her testimony will assist me in that
8 regard on restitution.

9 So for those reasons, I will allow her to give her
10 expert opinion testimony, and Defendant's objections are
11 overruled.

12 So now you may proceed with the rest of the
13 testimony.

14 MS. ONG: Thank you, Your Honor.

15 DIRECT EXAMINATION (Continued)

16 BY MS. ONG:

17 Q. All right. Ms. Kenney, kind of picking up where the Court
18 left off, the Court was asking you about some of the documents
19 that you've had an opportunity to review here in court today.
20 Did you and I meet this morning prior to you testifying today?

21 A. Yes.

22 Q. And did we go through those documents together?

23 A. Yes.

24 Q. All right. And so, do you have a copy of those documents
25 in front of you?

1 A. I do.

2 Q. All right. Did you review Document 1 in this case, the
3 Criminal Complaint?

4 A. Yes.

5 Q. Did you review Document 33, the Government's Response to
6 Defendant's Motion to Suppress?

7 A. Yes.

8 Q. Did you review a portion of Document 72, which is the PSR,
9 that portion being the Offense Conduct and the Victim Impact
10 Statements?

11 A. Yes.

12 Q. Did you review Document 77, the United States Sentencing
13 Memorandum?

14 A. Yes.

15 Q. Did you review Document 83, the United States Restitution
16 Brief?

17 A. Yes.

18 Q. Did you review Document 88, the 3rd Addendum to the PSR?

19 A. Yes.

20 Q. Did you review Document 96, the 4th Addendum to the PSR?

21 A. Yes.

22 Q. And did you review Document 108, the 5th Addendum to the
23 PSR?

24 A. Yes.

25 Q. Based on your review of those documents, do you feel that

1 you have an accurate understanding of the facts in this case;
2 basically, the criminal conduct that led to the prosecution of
3 Mr. Blackburn?

4 A. Yes.

5 Q. And in those documents, did it lay out some of the
6 evidence that was uncovered in addition to the Defendant's own
7 admissions about what he did in this case?

8 A. Yes.

9 Q. All right. So having had an opportunity to review some of
10 those documents -- and they include letters from a therapist
11 who is seeing M.M. They also include letters from A.M.'s
12 parents about some of the current -- M.M. and A.M.'s parents
13 about some of the current therapies that they're undergoing.
14 Is that right?

15 A. That's correct.

16 Q. All right. So just based on your review of the facts of
17 this case, have you had clients who have undergone similar
18 traumas as the victims in this case?

19 A. Yes.

20 Q. And have you treated them for that abuse that they
21 underwent?

22 A. Yes.

23 Q. Okay. And so can you explain to the Court what some of
24 those different treatments entail.

25 A. Again, depending on the needs of the individual clients

1 and their ages, having some type of trauma treatment.
2 Outpatient psychotherapy. It could be in-home services working
3 with children and their family systems. Attachment type work
4 where you work with, if you have a viable caregiver -- so, for
5 example, an adoptive parent, working on the parent-child
6 attachment for young children, because of the impact that
7 trauma has between children in particular when they're 0 to 5,
8 those critical years of brain development.

9 A lot of times there's needs in terms of speech or sensory
10 integration, so occupational therapy services would be an
11 adjunct service. Speech and language services. Sometimes kids
12 need physical therapy. Sometimes kids do need psychotropic
13 medications and they need to see a psychiatrist.

14 Other services could include behavior modification. We
15 also look at the educational environment, whether that's a
16 preschool or Head Start, or a public school, making sure kids
17 have IEPs and get services that meet their needs.

18 Q. All right. And just going back real quick, I know that we
19 went through the documents that you reviewed. You didn't
20 review all of those this morning? You had access to them prior
21 to this morning?

22 A. Yes.

23 Q. All right. And did you do any additional research in
24 preparation for your testimony here today?

25 A. I did.

1 Q. Can you tell the Court some of the things that you
2 researched specifically to testify in this case?

3 A. The things that I researched specifically, a lot of them
4 have to do with the Adverse Childhood Experiences Study, and I
5 can talk a little bit about what that is and why it's so
6 important in understanding the impact of trauma across
7 somebody's life span. This is originally the work of Felitti
8 and Anda, and it's work that's been replicated for over 20
9 years now.

10 I also looked at information specific to the impact of
11 being the victim of child pornography or child abuse images on
12 individuals, and how that also is something that gets revisited
13 across the life span.

14 I looked at research that talks about the neurobiology of
15 trauma, which basically means that we now know through hard
16 science that when children are traumatized, that it actually
17 impacts the way our brain forms and develops, and then the way
18 we then function for the rest of our life.

19 And the other thing I looked at, of course, is the impact
20 of childhood sexual abuse and the short and long-term
21 consequences of that.

22 Q. So is there a different treatment plan, from a clinical
23 perspective, that gets put into place for someone who is the
24 victim of sexual abuse versus someone who is the victim of
25 sexual abuse that is recorded and disseminated?

1 A. Yes.

2 Q. And what is the reason for that?

3 A. The reason that there's a difference is because although
4 sexual abuse is a unique trauma in and of itself, because it
5 has characteristics that we don't see in other types of
6 traumatic experiences, the addition of the child abuse imagery
7 or child pornography, there is no resolution or true closure
8 for that, because once those images are out there, they cannot
9 be recalled. So it affects that child and that child's
10 family's right to privacy and their ability to feel like
11 they're safe for the rest of their life.

12 Q. So just taking your own experience into account, on
13 average would you say that victims of child pornography undergo
14 treatment longer than someone who is just -- and I know that
15 each case is different, but just pulling from your own
16 experience, do victims of child pornography usually have to
17 undergo longer periods of treatment versus someone who was the
18 victim of sexual abuse that was not recorded and disseminated?

19 A. Yes.

20 Q. And I know when I was asking you about some of the things
21 that you reviewed, you talked about the Adverse Childhood
22 Experiences Study. Can you explain to the Court what that is?

23 A. The Adverse Childhood Experiences Study, what we commonly
24 refer to as the ACEs study, is one of the most important pieces
25 of research that's ever come out in the field of just trauma in

1 general. It's a study that started back in 1995. It's a
2 longitudinal study, and the sample size is over 17,000 people.
3 Longitudinal means that they have actually followed these
4 17,000 people for the past 20 years. So as opposed to another
5 type of study that says, oh, we're going to look at 300 people
6 and then we're going to follow them in six months and see how
7 they're doing, they actually have this huge sample size and
8 they've been following these people for two decades.

9 what the study has uncovered is the connection between our
10 long-term health and social welfare, emotional well-being, and
11 the connection that that has to do with adverse experiences
12 that an individual has from age 0 to age 18.

13 Q. And is there any type of score that came out of the study
14 that allows you to assess victims of childhood trauma?

15 A. Yes. The ACE Score is a very simple scoring system. It's
16 0 to 10. So, there's 10 categories of ACEs, and basically,
17 your ACE score is going to reflect the number of these adverse
18 experiences that you've had from birth to age 18.

19 So, there's three categories of abuse. There's physical
20 abuse, sexual abuse, and emotional abuse. There's two
21 categories of neglect, physical neglect and emotional neglect.
22 And then there's five areas of household dysfunction, and those
23 include being in a single parent home, being in a home where
24 there's domestic violence, being in a home where there's
25 substance abuse, being in a home where there is an incarcerated

1 household member, and being in a home where there's untreated
2 mental health problems. So, basically, an ACE score would be
3 how many of those experiences you've had before the age of 18.

4 Q. Based on your review of the facts in this case, and I know
5 that you're not privy to every single thing that happened to
6 A.M. and M.M. in their childhood, but based on your review of
7 the sexual abuse that the Defendant perpetrated on them, do you
8 have an opinion as to what their ACE score is?

9 A. Just based on the things that I know were perpetrated by
10 the Defendant, there's clearly sexual abuse, there's some
11 physical abuse, emotional abuse, and then neglect. So I would
12 estimate, at minimum, just with that, each of these children
13 have an ACE score of four.

14 So then what that means for them, from now until they die,
15 compared to a child that has an ACE score of zero, children
16 that have an ACE score of four are twice as likely to be
17 smokers, seven times more likely to be alcoholics, ten times
18 more likely to ingest street drugs, and twelve times more
19 likely to attempt suicide over their life span.

20 Q. And is it the belief in the clinical community that some
21 of the treatments that you can provide these victims with will
22 help minimize that in the future?

23 A. Yes. It would be hoped that with multi-disciplinary
24 services, not even mental health services, but meeting their
25 medical and their educational needs, and their job training

1 needs, and social skills, and relationship building stuff, that
2 in some way we could remediate some of those risks, or
3 intervene in a way that can actually help kids overcome some of
4 that damage that was caused in early childhood.

5 Q. All right. I want to -- I know you had a chance to review
6 some of the documents in this case. I want to turn your
7 attention to one of the letters that was provided by A.M.'s
8 parents. That's Document 96-1, which means that it's Exhibit 1
9 of Document 96. In it, A.M.'s parents detailed some of the
10 different kinds of therapies that he's currently undergoing.
11 So I just kind of want to break that down.

12 One of the therapies is Attachment Healing. Are you
13 familiar with that?

14 A. I am.

15 Q. Can you explain what Attachment Healing Therapy is?

16 A. Attachment Healing Therapy works in the parent-child dyad.
17 So, it's trying to undo some of the relational damage that's
18 done when children are exposed to neglectful or abusive
19 parenting, in particular in their early childhood, ages 0 to 3
20 or 0 to 5.

21 Q. All right. And I think that the Probation Officer, in
22 speaking with another clinician, basically assessed the average
23 cost of that as \$200. Does that comport with your
24 understanding of how much a single session of Attachment
25 Healing Therapy would be?

1 A. Yes.

2 Q. Is it fair to say that there could be a range --

3 A. Yes.

4 Q. -- with regard to the cost?

5 A. Yes.

6 Q. Per your estimate, what would be the appropriate range for
7 that specific type of therapy?

8 A. It depends on where you're living. For New Mexico,
9 anywhere from \$150 to I would say as high as \$250 an hour per
10 session.

11 Q. And when you are talking about therapy, you know, is there
12 a difference -- well, I guess we're going through some of the
13 differences. But the therapies that we're talking about, are
14 those specialized therapies?

15 A. Yes.

16 Q. And so on average, do those cost more?

17 A. Yes.

18 Q. All right. One of the other therapies that they talked
19 about is that he's currently undergoing Sand Tray Therapy. Are
20 you familiar with that?

21 A. I am.

22 Q. And can you explain what that is?

23 A. Sand Tray Therapy, it's along the expressive modality. So
24 it's in some ways parallel to using, like, Play Therapy or Art
25 Therapy. What Sand Tray Therapy does is it allows children,

1 when they don't have the words to express what's happened to
2 them, to use images and miniatures that they then use in a sand
3 tray as a way to project their understanding of what's happened
4 to them. And then through those images, the therapist can try
5 to help to rework that trauma in a way that's more meaningful
6 and accurate.

7 Q. And again, I think the Probation Officer assessed that the
8 average cost of that type of therapy per session would be \$200.
9 Does that comport with your experience of how much a single
10 session would cost?

11 A. Yes.

12 Q. Same thing here, is there a potential range that could
13 apply?

14 A. Yes.

15 Q. And that \$200 falls within what you would expect it may
16 cost here in New Mexico?

17 A. Yes.

18 Q. All right. They also said that A.M. is currently
19 undergoing occupational therapy. Are you familiar with that?

20 A. Yes.

21 Q. What is occupational therapy?

22 A. Occupational therapy deals with the sensory dysregulation
23 that we often see in children that have a history of abuse and
24 trauma. That means an individual can be hypersensitive to
25 sounds or sights or odors, or even under respond. So

1 occupational therapy helps to retrain that individual so that
2 when they're intaking information from their environment, that
3 they respond appropriately, versus over- or under-responding.

4 Q. The Probation Officer assessed an average cost of \$200 for
5 a single session of occupational therapy. Does that comport
6 with your experience of how much that session would cost?

7 A. Yes.

8 Q. It also states that A.M. is currently undergoing speech
9 therapy. Can you explain what that is?

10 A. The speech therapy can help with a number of different
11 things. It can build vocabulary. Especially if children come
12 from a neglectful environment, a lot of times their language
13 development is delayed. So it can help try to bring children
14 closer to their developmental level. It can work on
15 articulation or pronunciation issues that children might have.

16 Q. The Probation Officer assessed an average cost of \$200 per
17 session for that type of therapy. Does that comport with your
18 training and experience of how much a single session of speech
19 therapy would cost?

20 A. Yes.

21 Q. All right. I believe that A.M.'s parents also reported
22 that in addition to these five different types of therapies,
23 he's also seeing a psychiatrist once a month.

24 A. Yes.

25 Q. So, you're familiar with the facts of this case and with

1 the sexual abuse that A.M. went through at the hands of the
2 Defendant. Based on your review of that, do you have an
3 opinion as to whether or not it's appropriate for him to be
4 attending all of these therapies in addition to a psychiatrist?

5 A. Yes. It's my opinion that these are probably very
6 necessary for children that have a young -- young children that
7 have a history of trauma.

8 Q. Have you recommended this level of extensive therapy in
9 the past to clients that you've treated?

10 A. Yes.

11 Q. Okay. I believe the Probation Officer made these
12 assessments and basically is accounting for 12 years' worth of
13 therapy. For someone who has undergone the sexual abuse that
14 A.M. has, do you have an opinion as to whether he will need to
15 continue receiving this type of therapy for at least the next
16 12 years?

17 A. Yes.

18 Q. And what is your opinion?

19 A. Based on what I've seen in my practice, and what I know
20 about the research, and what the ACEs study tells us, it's
21 going to be longer than 12 years.

22 Q. So 12 years is a conservative estimate for how long he's
23 going to need to undergo this level of mental health
24 participation?

25 A. Yes.

1 Q. All right. Let's see here. According to another one of
2 the letters that was -- or, according to that same letter
3 submitted by A.M.'s parents, they said that he has been
4 diagnosed with severe PTSD and RAD. Are you familiar with both
5 of those diagnoses?

6 A. Yes.

7 Q. What is PTSD?

8 A. PTSD is Post-Traumatic Stress Disorder. It's
9 characterized by symptom clusters, such as intrusion. So that
10 could be flashbacks or nightmares being triggered. A symptom
11 category of avoidance, which is, I don't want to talk about it,
12 I want to avoid all the thoughts, I want to avoid any type of
13 memory. A symptom cluster of hyperarousal, and that's the
14 inability to fall asleep. That is the exaggerated startle
15 response, the psychomotor agitation.

16 And then there's a cluster of symptoms related to
17 distortions in either your emotional state or in your
18 cognition. So basically, what that means is that your mood is
19 unstable as a result of the PTSD and/or your thoughts about who
20 you are, or the safety of the world, or why things happen to
21 you, are distorted. They're incorrect.

22 Q. And are you surprised, based on your experience, that A.M.
23 has been diagnosed with those disorders?

24 A. No.

25 Q. The different types of therapies that we just went

1 through, are those designed to help treat that?

2 A. The Sand Tray, the medication, and the Attachment and
3 Healing are meant to treat specifically those mental health
4 symptoms. The other services, the occupational therapy and the
5 speech and language, are adjunctive services that are meant to
6 remediate other things, such as the speech and language
7 difficulties, and the dysregulation from sensory stimuli.

8 Q. All right. I want to move now -- we've been talking about

9 A.M. Now I want to move to M.M.

10 I believe some of the documents that you reviewed kind of
11 go through the treatment that M.M. is currently undergoing, and
12 I want to direct your attention to Document 88, Exhibit 1,
13 which is a letter from Leah Brouwers, who was treating M.M. for
14 a period of time. Do you recall reviewing that document?

15 A. Yes.

16 Q. Let me just ask you, what was your opinion just regarding
17 this letter in general?

18 A. I was really impressed when I read it. It seems like this
19 child is in really good hands. A lot of the things that she's
20 either recommending or that she's doing are consistent and in
21 line with what we know about the best standards for treatment
22 of childhood trauma and abuse.

23 Q. So you would concur with the recommendations that
24 Ms. Brouwers laid out in her letter?

25 A. Yes.

1 Q. In Document 88, which is the 3rd Addendum to the PSR, it
2 kind of breaks down future costs for M.M., and I believe that
3 the Probation Office spoke with Julia Padilla, who is a
4 psychiatry technician with La Familia-Namaste, and she
5 estimated that the psychotherapy sessions that M.M. is
6 undergoing on average would cost \$200 per sixty minute session.

7 Based on what you know about M.M. and the treatment that
8 she's receiving, does that \$200 number comport with your
9 experience with regard to how much those therapies would cost?

10 A. Yes.

11 Q. She also detailed the cost of medication management, so I
12 would assume -- I guess we haven't really fleshed this out.
13 But in a lot of these cases, you undergo therapy, and I believe
14 you did say that sometimes it's actually necessary for victims
15 of childhood trauma to take medication. Is that fair?

16 A. Yes.

17 Q. And what are those medications? What's the purpose of
18 them?

19 A. It's going to depend based on the individual. Typically
20 the standard of practice is, you try therapy first, because
21 it's a less intrusive intervention. When you start looking at
22 taking medication, it's much more intrusive, especially for
23 young children.

24 So if we know that therapy and adjunctive services alone
25 are not making the progress that's necessary, then we would

1 have a psychiatrist do an evaluation. So that medication could
2 be for sleep, it could be for mood stability, it could be for
3 emotional outbursts or aggression, things along those lines.

4 Q. And I believe that it was reported that for M.M., the cost
5 of her medication management is \$125 per 30-minute session.

6 Does that number comport with your experience as to how much it
7 would cost for a 30-minute session?

8 A. Yes.

9 Q. It also states that M.M. is currently participating in
10 biweekly psychotherapy sessions and medication management once
11 a month. Based on what you know about M.M. and the sexual
12 abuse that she suffered, does that appear to be an appropriate
13 course of action with regard to her therapy.

14 A. Yes.

15 Q. And I believe you testified -- or, would you be surprised
16 if in the future, they need to increase the amount of therapy?

17 A. No.

18 Q. All right. And so going off of that, every single person
19 that you see is different, but can you explain to the Court
20 from your experience treating young children who have undergone
21 similar trauma as the victims in this case, throughout the
22 course of their life, what are going to be some of the
23 potential triggers that may send them back to therapy, even
24 past the age of 18?

25 A. In regards specifically to sexual abuse?

1 Q. Yes.

2 A. Okay. Again, every person is different. There's lots of
3 things that could happen that could trigger an individual.
4 However, what the research talks to us and helps us understand
5 is that when kids have been sexually victimized, there are five
6 generally consistent timeframes that, as they get older and
7 they're addressing different developmental tasks, issues
8 related to their sexual trauma can resurface. Those five
9 milestones are actually all connected either with sexuality,
10 sexual development, intimacy, or child carrying.

11 And so -- and this is the work of Jan Hindman. The first
12 potential milestone is puberty. Even if a child has
13 successfully completed treatment for sexual trauma that
14 occurred at a younger age, when they hit puberty, it's possible
15 that because puberty is about your body developing sexually,
16 that that could trigger a need to come back into treatment. So
17 puberty is the first. The second potential developmental
18 milestone that could cause sexual abuse to resurface is when
19 that individual victim starts to engage in consensual sexual
20 contact. So they're dating.

21 The third is being in a committed relationship, or being
22 married. Some sort of long-term relationship, because that has
23 a component of intimacy, but it also has a component of trust.
24 The fourth is when the victim has a baby, and the fifth is when
25 their child turns the same age that they were when their sexual

1 abuse happened.

2 So those are just potential milestones that are pretty
3 consistent for individuals that are survivors of sexual trauma.

4 Q. In your own experience, have you been able to see this
5 actually play out with clients that you treat?

6 A. I have seen it play out. I've been in Las Cruces since
7 2008 with my practice, and so I've actually had the opportunity
8 of kids that I treated when they were younger, that were done
9 with treatment and seemed to be doing well, end up resurfacing
10 when they hit adolescence.

11 Q. So again, just going back to the numbers in this case, the
12 Probation Officer made estimates, and I think that they were
13 saying this for the next 12 years. I think you testified with
14 regard to M.M. that you consider that to be a pretty
15 conservative estimate, with regard to how long A.M. -- I don't
16 know if I said A.M.; I meant to be talking about A.M. -- that
17 you thought that was a conservative estimate as to how long he
18 will have to be in therapy. Is that right?

19 A. That's right.

20 Q. Does the same go for M.M.?

21 A. Yes.

22 Q. So you wouldn't be surprised if they had to continue
23 therapy well beyond 12 years from now?

24 A. That's correct.

25 Q. In total for the next 12 years for M.M., Probation

1 believes that \$57,600 is an appropriate amount to request for
2 psychotherapy costs for the next 12 years. Does that number
3 comport with your experience of how much it would cost to treat
4 M.M. for 12 years' worth of psychotherapy?

5 A. Yes.

6 Q. And also with regard to M.M., the Probation Officer
7 assessed a number of \$18,000 for psychiatry and medication
8 management for 12 years. Does that number comport with your
9 experience as to how much it will cost to treat M.M. for
10 psychiatry and medication management for the next 12 years?

11 A. Yes.

12 Q. With regard to A.M., in total, the Probation Officer
13 assessed for both therapy and psychotherapy -- I think we
14 already kind of broke down the cost for A.M. But in total, the
15 Probation Officer assessed a number of \$144,000 for the next 12
16 years for A.M.'s therapy and psychotherapy. Does that number
17 comport with your experience as to how much it would cost to
18 treat A.M. for the next 12 years?

19 A. Yes.

20 Q. In your opinion, are these conservative estimates, or do
21 you have any opinion about that?

22 A. I believe they're conservative estimates.

23 Q. So very likely it could cost a lot more?

24 A. Yes.

25 MS. ONG: Your Honor, may I have a moment?

1 THE COURT: Sure.

2 BY MS. ONG:

3 Q. All right. Ms. Kenney, you've had a chance to review some
4 of the facts in this case with regard to the sexual abuse that
5 the Defendant perpetrated on these young children. One of the
6 components that's present in this case is that there may have
7 been neglect or even sexual abuse by someone other than the
8 Defendant. Even taking that into consideration -- or, do you
9 have any opinion, as to the extent of the Defendant's abuse,
10 how that affects the treatment that they need regardless of any
11 other trauma that they've undergone?

12 A. Just based on the things I know from the Defendant, with
13 that ACE score of four and the fact that there's child abuse
14 imagery involved, the needs of these children is going to be
15 great throughout their lifetime, even if they didn't have any
16 other types of traumatic experiences.

17 Q. And would that be the same even if they did have other
18 types of traumatic experiences?

19 A. Yes.

20 Q. Now, I know that when Ms. Katze was voir diring you, she
21 was asking you, you know, you didn't actually see these
22 victims, you didn't actually treat them. Why is it that you
23 can testify regarding the facts that you know given your
24 experience and background, in this case even though you have
25 not actually treated the victims here?

1 A. I think a couple of things. It's similar to when people
2 bring me in to train and to teach other therapists how to work
3 with traumatized kids. It's not because I'm actually doing the
4 work, it's because I have the knowledge and the expertise so
5 that they can then use that in their work. So it's sort of a
6 similar situation.

7 But the other thing is, it removes my role as a therapist
8 to advocate for my clients. So that is part of what I do when
9 I actually see the clients, whereas when they're not my
10 clients, I don't have to worry about doing that advocacy piece
11 and I don't have that therapeutic alliance as any way to kind
12 of skew my recommendations.

13 Q. And I believe you had testified that it allows you to be
14 more objective; is that correct?

15 A. Yes.

16 MS. ONG: Your Honor, I pass the witness.

17 CROSS-EXAMINATION

18 BY MS. KATZE:

19 Q. I'm just going to go a little bit backwards. You just
20 said that you felt comfortable offering an opinion on such a
21 serious matter in a case where you've never seen anybody
22 involved in the case or talked to them because you felt that
23 you could be objective; is that right?

24 A. Yes.

25 Q. And you feel that you can be objective when, in

1 preparation for your expert testimony, you only spoke to the
2 prosecutor; correct?

3 A. That is correct.

4 Q. You didn't speak to me, the defense attorney; correct?

5 A. That's correct.

6 Q. And the material that you reviewed seems very
7 prosecution-oriented. You got the Government's response to my
8 suppression motion; right?

9 A. Yes.

10 Q. You didn't get my suppression motion?

11 A. I don't think so.

12 Q. You got the Government's Sentencing Memo, you did not get
13 my Sentencing Memo?

14 A. That's correct.

15 Q. But you feel that even though all your information was
16 one-sided, that you could be objective?

17 A. I'm basing my recommendations not just on what I read from
18 the prosecution, but I'm also basing it on the research that we
19 use throughout the trauma treatment field.

20 Q. But you will agree that you were limited in the
21 information that you got in this particular case; is that
22 correct?

23 A. Yes.

24 Q. And as you already testified to, therapy treatment is
25 really individualized?

1 A. Yes.

2 Q. And that's the whole benefit of it, isn't it, that it is
3 tailored to the individual?

4 A. Yes.

5 Q. Let me step back one more step. You were asked -- I guess
6 it wasn't exactly like this, but whether you could parse out
7 the abuse by Michael Blackburn versus the sexual abuse by a
8 biological parent and the negligence by a biological parent.
9 And you didn't actually say that you thought you could break it
10 down and say, this percentage of the child's suffering now is
11 due to this, and this is due to this; right?

12 A. That's right.

13 Q. Would it be fair to say -- and I believe this was in the
14 material that you got to review. I think it was actually in
15 Counselor Brouwers' letter. She talked about, for M.M., that
16 she was suffering due to a lifelong pattern of abuse and
17 neglect. Did you see the letter.

18 A. I did see the letter. I do have the letter.

19 Q. She referred to that, and so clearly she's referring to
20 the neglect and abuse by the biological parents, because
21 Mr. Blackburn was in her life for, I think, nine months. So I
22 think that the therapist recognized that there was other abuse
23 to the children. Not minimizing what Mr. Blackburn did, but
24 they were sadly the victims of other physical abuse, correct,
25 from your review the material?

1 A. Yes.

2 Q. And neglect. The children were taken away from their
3 parents; right? Are you aware of the fact that they've been
4 adopted?

5 A. Yes.

6 Q. So they were taken away from their biological parents --

7 A. Yes.

8 Q. -- because their neglect and abuse was extreme enough that
9 they would be taken away?

10 A. I'm assuming that's correct. I didn't review any of
11 those.

12 Q. Do you have any experience with termination of parental
13 rights?

14 A. Yes.

15 Q. And you would agree that it's a hurdle to actually
16 terminate parental rights?

17 A. Yes, it is.

18 Q. And I'm sure that there are sometimes that providers wish
19 that the rights would be terminated way sooner?

20 A. Yes.

21 Q. But the system's emphasis is on reunification, isn't it?

22 A. It is.

23 Q. So in this particular case, the parents' rights, parental
24 rights, were terminated and they've been legally adopted; is
25 that correct?

1 A. Yes.

2 Q. And just one more thing about Counselor Brouwers. You
3 indicated that you were impressed with the letter and her
4 treatment. But she is no longer treating M.M., is she?

5 A. I don't know.

6 Q. Backing up a little further, you talked about triggers in
7 the context of sort of psychosexual development, that there
8 would be certain psychosexual milestones, puberty, first
9 intimate sexual relations, and that those could be triggers to
10 individuals who had suffered childhood sexual abuse at a young
11 age?

12 A. Yes.

13 Q. Let me ask you a question, or for your opinion as an
14 expert on whether you think this is a trigger. If every time
15 somebody out there looks at a picture, a pornographic picture
16 of a child, and then the child and the family is notified every
17 time for the rest of their life, do you think that would be an
18 unhealthy trigger?

19 A. It depends on the family and their situations. For some
20 families and victims, they don't want to know about that. For
21 others victims, they do want to know about that. So I would
22 defer to what that particular family would want.

23 Q. Let me ask you, the families that say they want to know
24 about it, have you treated anybody in that situation?

25 A. Yes.

1 Q. And so ongoing, over the years, when they get notified,
2 hey, in Holland your picture came up, in Florida your picture
3 came up, do you, as a therapist, do you find that that has a
4 therapeutic benefit for them, to continually hear that someone
5 has looked at those pictures?

6 A. For the family that I have in mind, it actually was
7 something -- for this particular family, knowing that it was
8 out there, then they would bring that in and talk with me about
9 their emotions about it, and then how do we explain this to our
10 older children. What is the likelihood -- like, how do we
11 protect our child? Because every time they're in front of a
12 computer, we're scared that an image is going to pop up.

13 Q. So why is it helpful for them to be notified for the rest
14 of their lives that someone looked at that?

15 A. Because for this particular family, it allowed them at
16 least to make informed decisions about how to move forward.

17 Q. And do you think that they would be unable to make those
18 informed decisions if, let's say, they found out one time? Do
19 you think it's helpful that they find out every time year after
20 year after year?

21 A. For this particular family, or in general?

22 Q. Is this the only one? I guess I'm asking in general. To
23 see, it sounds like a huge trigger. I understand victims'
24 rights and why they have the notification, but from a
25 therapeutic standpoint, to me it seems really unhealthy. And I

1 was wondering for you, as an expert, if that's a trigger, every
2 time they get notified of that.

3 A. It could be a trigger.

4 Q. So, absolutely no question horrific abuse, and the
5 children need to heal and be treated. I have sort of a general
6 question. Is it ever appropriate, therapeutically appropriate,
7 to do less therapy than more therapy?

8 A. If it's what's clinically indicated.

9 Q. And why would it be clinically indicated to do less
10 therapy?

11 A. For me as a clinician, and the standard, we look at a
12 number of different things. So we're going to look at how the
13 child's functioning, how they're doing across the board, the
14 child's report on how they think they're doing, the caregiver's
15 report. If we have collateral information, so for example,
16 information from the school about how they're doing. And then
17 looking at the trajectory of stresses.

18 So, for example, if it's a criminal case and this is a
19 child that's going to have to do a video deposition or have to
20 testify, even if some of the symptoms have gotten better and
21 their functioning is improved, if we know that this big
22 stressor is around the bend, we're not going to reduce
23 treatment or terminate treatment.

24 But if we take all of those factors together, symptoms
25 have been reduced, coping is better, functioning is better, and

1 it's been stable for a period of time, three to six months, not
2 just, oh, we have two good weeks, then we'd hold a discussion
3 about, do we reduce sessions, do we pull out one of the
4 services, do we start seeing the child once every other week,
5 do we look at -- depending on the needs, can we do a straight
6 termination. Let's do eight weeks of termination and closure,
7 and have the child be done with treatment, except when they
8 have to come back in for checkups. It's kind of a long answer.

9 Q. No, I guess my question sort of related to my prior
10 question about triggers. I'm just wondering if in the array of
11 therapeutic responses, is meeting with a child five times a
12 week and talking about the horrible abuse that they've been
13 through -- maybe for some people, I understand, maybe that
14 helps work it through, and that helps healing and grieving.
15 would you agree everyone heals and grieves differently?

16 A. Yes.

17 Q. So I'm just wondering, that kind of intensive therapeutic
18 intervention, does that have a negative impact on people, ever?
19 In that same sense, like I'm saying, as a victim, you keep
20 getting a call that your picture is showing up, does it not
21 sometimes allow people to move on from the tragedy and the
22 trauma?

23 A. I am not sure what you're asking me.

24 Q. well, I guess -- let me try to say it another way.

25 So, clearly horrible trauma. An individual needs to be

1 treated. But does treatment -- is it always appropriate that
2 the treatment is five times a week for 12 years? Is that
3 always the best thing for the individual? Is less treatment
4 maybe better?

5 A. Less treatment could be better.

6 Q. I'm going to ask you -- because I was trying to do some
7 research on the idea of, well, is more treatment better. I was
8 thinking in other contexts, like if you have relationship
9 counseling, I don't know if one time a week is good, or is five
10 times a week better, do we save more marriages that way.
11 Obviously for some people, in some treatment, therapy is
12 important.

13 And the other thing I was wondering, because the children
14 were so young, they were under three years old during this
15 abuse, so I looked at, and I'd ask you, have you done any
16 research on whether the younger the victim is, are they more
17 likely to have less memory of it? I know that A.M.'s mom
18 testified here today that it sounds like according to her,
19 memories are very present. I'm wondering in the cognitive
20 development, are the memories really present? Do the memories
21 get reinforced from super frequent treatment?

22 A. Memories can be stored differently. well, trauma memories
23 are stored differently, anyway, and that's what we know from
24 the neurosciences. So they're stored much more as fragments
25 and body sensations, not necessarily with a language component

1 to them.

2 Treatment helps us to give language for those traumatic
3 experiences. So with young children, especially preverbal
4 trauma, it's going to be remembered in their body with them not
5 even having a context for understanding it.

6 Q. So I found -- this is actually called Child Physical and
7 Sexual Abuse Guidelines for Treatment. It's a little bit old.
8 It's from 2003. But it's put out by the U.S. Department of
9 Justice. And it talks about sexual abuse and it talks about
10 different treatment modalities, and you actually mentioned some
11 of them.

12 And so I just wanted to go over a couple of them with you,
13 because in this report from the DOJ, they talk about like an
14 estimated time that would be appropriate to conduct that
15 therapy. I just want to see if you're familiar with the study.

16 So, are you familiar with cognitive processing therapy?

17 A. Yes.

18 Q. Can you just briefly tell us what that is? Because I know
19 it's related to PTSD and you talked about PTSD.

20 MS. ONG: Your Honor, I'm sorry, can I just see what
21 that study is called?

22 MS. KATZE: I'm sorry. Here, I can give you that.

23 MS. ONG: Thank you.

24 BY MS. KATZE:

25 Q. Cognitive processing therapy. Just briefly, what is it?

1 A. It's basically helping people put words to their traumatic
2 experiences. Reprocessing trauma or other stressors in a way
3 that's more accurate and meaningful.

4 Q. Okay. And that's a modality to treat sexual abuse trauma
5 sufferers; right?

6 A. I don't use it. Actually, I'd like a copy of the report
7 so I can see it, because it's not anything that I looked at.
8 And part of that is because it's from 2003, so it's 14 years
9 old, and we have much more current information in the field
10 now. So it would be helpful for me to see it.

11 Q. Okay. Well, I guess the way I'd like to do this is just
12 ask you if you know the modality, and then, for example,
13 cognitive processing therapy, they indicate the duration of
14 treatment is 12 to 16 sessions. Is that something you're
15 familiar with?

16 A. I am familiar with that.

17 Q. The next modality you actually mentioned, you brought up,
18 Eye Movement Desensitization and Reprocessing. What is that?

19 A. EMDR is a -- because traumatic memories are stored
20 differently, they're stored as fragments, they don't have a
21 language component to them. They're stored in the right
22 hemisphere of the brain. And in order to get them integrated
23 so that they have language, EMDR requires that an individual
24 pay attention to a stimuli. Usually it's a finger going across
25 the person's body and their eyes are following it while they're

1 recalling their traumatic memory. Because that way it allows
2 the sensory fragments, sounds, smells, sensations, to be pulled
3 out of the right hemisphere, and then they're reprocessing it
4 with words and now it gets stored as a more coherent narrative.
5 It helps reduce flashbacks and intrusion.

6 Q. And the DOJ report says that the duration of that
7 treatment is two or three sessions.

8 Are you familiar with Resilience Peer Training
9 Intervention?

10 A. No.

11 Q. Do you know a Dr. John Fantuzzo?

12 A. No.

13 Q. So, this is a school-based intervention for young abused
14 children that's based on an ecological model and uses competent
15 peers and parent helpers to increase the children's social
16 competence. Another treatment modality that they suggest is 20
17 play sessions over an eight-week period with booster and
18 follow-up sessions.

19 Another article on that is on Focused -- well, let me ask
20 you, are you familiar with Focused Cognitive Behavioral
21 Therapy?

22 A. TF-CBT, Trauma-Focused Cognitive Behavior Therapy?

23 Q. Yes.

24 A. Absolutely I am with familiar with it.

25 Q. Okay. They talk about short-term treatments typically

1 provided in 12 to 18 sessions of 50 to 90 minutes. Is that
2 something you practice?

3 A. No, it is not, although I am trained to do TF-CBT.

4 Q. You are?

5 A. Yes.

6 Q. So from what I read, that treatment should be
7 trauma-focused and directive; is that correct?

8 A. Yes.

9 Q. And treatments that are open-ended and just supportive
10 have been shown to be less effective?

11 A. Yes.

12 Q. And again, in the DOJ report with respect to that
13 treatment modality, they say 12 to 16 sessions.

14 A. And that is incorrect.

15 Q. You have a different opinion than the report?

16 A. The researchers, the founders of the model of TF-CBT will
17 say, when they do the research studies -- and so here's the
18 breakdown. If I were to do TF-CBT with fidelity, I would do
19 the 12 to 20 sessions, or whatever it is, and then I would give
20 my standardized measure, and then I'd be able to say, look,
21 their trauma symptoms are better. Those kids in the research
22 study, they're not done with treatment, they're just done with
23 the study. Those kids actually stay in treatment, and they
24 process different parts of their trauma.

25 So to say that -- so it can be delivered with fidelity,

1 which means you hold to that model. The minute you deviate
2 from that manual, you're no longer doing TF-CBT. So if I did
3 it with fidelity, the post-traumatic symptoms probably would
4 get better, but it doesn't mean that the child doesn't need
5 continued treatment.

6 Cohen, Mannarino and Deblinger, and the other people that
7 research it, they actually talk about that. In fact, I just
8 went through another two-and-a-half day intensive training on
9 TF-CBT, and that was one of the issues that got brought up.
10 Even the trainer who has done research said, oh, no, I still
11 continue to see those kids, because they still have needs. But
12 for the purpose of the studies and the model, what we're saying
13 is, you can reduce some of the PTSD symptoms. So it's --

14 Q. In keeping -- I'm sorry. In keeping with the way that
15 TF-CBT is set out; is that correct?

16 A. Yes.

17 Q. Because I have another thing from the Child Welfare
18 Information Gateway, it's something that's a part of the
19 Children's Bureau that Congress ordered, and it says a very
20 similar thing to what I had just read to you about the
21 short-term treatment typically provided is 12 to 18 sessions,
22 and that didn't talk about the study, per se.

23 Let me ask you about Trauma-Focused Integrative Eclectic
24 Therapy. Do you know that?

25 A. No.

1 Q. That's a psychosocial intervention dealing with both the
2 child and the child's relationship and living context with
3 respect to sexual assault. In that particular therapy in the
4 DOJ report, it says that the duration of therapy is variable,
5 generally over a period of months.

6 And then I think this is your area of expertise,
7 Trauma-Focused Play Therapy?

8 A. Yes.

9 Q. In Trauma-Focused Play Therapy, according to this report,
10 it says the duration of treatment is variable, generally over a
11 period of months. It just strikes me that that's substantially
12 less than 12 years of doing this intensive treatment, and so
13 I'm again wondering whether, is it in an individual's best
14 interests that we keep doing that? All these accepted
15 modalities don't seem to be recommending the intensity of
16 treatment for the extensive time period.

17 A. So, here's what we need to know about those studies. The
18 research samples for those studies are pretty much unrealistic
19 cases. So, for example, kids that participate in these
20 research studies generally have one type of trauma. It's
21 usually something that is more short-term.

22 They rule out for all kinds of things. So, for example,
23 not only can this child just have sexual abuse, they couldn't
24 ever have been neglected or physically abused or had any
25 adverse childhood experience. They rule out for substance

1 abuse. So if there's any substance abuse in the family, we
2 can't have them in the study. They do not see CYFD kids,
3 because those kids are the complex trauma.

4 So if you were to take my caseload, I don't even think
5 there would be a single kid I see right now that would even
6 qualify for a research study, because the kids that I see are
7 kids that have polyvictimization. They are the victims of more
8 than one type of trauma. So their trauma is complex trauma,
9 and the treatment for complex trauma is different.

10 Q. So you're saying there aren't studies that address people
11 suffering from complex trauma, that across the board studies
12 would only -- I'm not following you.

13 A. A lot of the studies are not true clinical samples. So
14 this is the breakdown. These treatment modalities are
15 efficacious, which means in an ideal setting, in a research
16 setting when everything is controlled for, we know that people
17 get better.

18 Now, whether or not they're effective, do they work in the
19 real world when we're talking about complex trauma, we're
20 talking about neglect, physical abuse, emotional abuse,
21 childhood sexual abuse, child abuse imagery, multi-problem
22 families, changing caregivers, are they really effective, the
23 jury is still out on that.

24 Q. How often do people just have one issue? Does everybody
25 in your field agree with you that -- it sounds like the entire

1 research in the treatment field is flawed because it's not
2 based on any -- so it doesn't sound like it's a scientific
3 field, because how is anything peer reviewed and tested?

4 A. Well, that's one of the things that we are getting better
5 at. You have to start somewhere. It's estimated that by the
6 time stuff gets studied in a research setting and then it gets
7 rolled out and it's actually used in the field, it takes about
8 17 to 20 years. And so, again, one of those breakdowns is the
9 sample that they're actually studying, and then the information
10 that doesn't get published in the study, and then who their
11 control group is.

12 So, for example, a lot of the control groups for our
13 evidence-based treatments are wait groups, wait lists.
14 Basically what that means is, we took 300 sexually abused kids
15 and we randomly assigned them to one of two treatments. One is
16 TF-CBT, so they get a round of treatment, and the other is the
17 wait list. They get nothing. And then they say, okay, now
18 when we study them, we take the kids that got TF-CBT, and they
19 actually do better than the kids that didn't get anything.
20 That's like me rescuing 500 people in the desert and saying,
21 250 of you get water, and 250 of you don't get anything.

22 Q. Let me ask you a question. A lot of your testimony, since
23 you have no personal knowledge of the case, you said I did
24 research, it's based on research. So this research that all
25 your opinions have been based on, is this 17 to 20 years old?

1 Is it the flawed research that you're talking about right now?

2 A. No, because the research that I'm referring to talks about
3 the impact of trauma. It's not talking about specific models
4 as being effective in trauma treatment. So there are two
5 different types of research.

6 Q. So the field is farther along as far as figuring out the
7 impact of trauma, but not how to treat that impact?

8 A. Yes.

9 Q. So that's troubling, right, because we're here trying to
10 figure out what's the course of treatment for someone, how long
11 do they need that, and there's not really any, apparently
12 according to you, any research or scholarship that would
13 educate us on that.

14 A. We do have information, but it's also insufficient to
15 answer the needs of kids that have complex trauma. There was
16 actually an expert panel that convened to do a meta-analysis, a
17 review of what we know about treatment of complex trauma.
18 These are things like childhood sexual abuse, the
19 polyvictimization. And what the experts agreed on is the way
20 treatment should look, that it should be sequenced and
21 phase-based. The very first part of treatment is stabilization
22 and some symptom reduction, and then the second phase of
23 treatment is the actual trauma narration and reprocessing.

24 But what the experts did not agree upon is how long
25 treatment needs to be. In general, because of the relationship

1 damage that's done in interpersonal trauma, which basically
2 means the person who is supposed to be taking care of you is
3 actually the source of trauma, because of that relationship
4 damage, it's illogical to think that you can repair somebody's
5 relationship damage in ten sessions if it took you three to
6 five years of abuse and maltreatment to get there.

7 Q. Let me ask you about another treatment that you talked
8 about, or you talked about that you had read about the
9 diagnosis of Attachment Disorder.

10 A. Yes.

11 Q. And I think it was A.A. that got diagnosed with that; is
12 that correct? Not A.A.; I'm sorry. A.M.

13 A. Yes, Reactive Attachment Disorder.

14 Q. Right, okay. So is it a fair shorthand to say that that
15 happens when somebody has come from a life of no love, that
16 they don't have love from their parents?

17 A. That's definitely one of the things that contributes to
18 it.

19 Q. And that same study of modality said that the duration of
20 treatment was variable, generally over a period of months.

21 Let me ask you about another study. Again, because I was
22 looking into the idea, do people forget under a certain age.
23 And I was trying to -- I found some research that said that
24 children under three -- people have very little memories of
25 what happened to them under three years old. And I'll get to

1 that in one second.

2 This is a report on child abuse, and the major findings
3 were that both sexual and nonsexual abuse were subject to
4 periods of forgetting, and that the most frequently reported
5 factor related to recall was being in therapy. So that just
6 sort of seemed like it reinforced my thought, that that is
7 what -- that what was the most common thing that brought up
8 recall was being in therapy.

9 One other study, this is written by Linda Meyer Williams,
10 this is Recall of Childhood Trauma: A Prospective Study of
11 women's Memories of Child Sexual Abuse. And here: "129 women
12 with previously documented histories of sexual victimization in
13 childhood were interviewed and asked detailed questions about
14 their abuse histories to answer the question, 'Do people
15 actually forget traumatic events such as child sexual abuse,
16 and if so, how common is such forgetting?'

17 "A large portion of the women (38%) did not recall the
18 abuse that had been reported 17 years earlier. Women who were
19 younger at the time of the abuse and those who were molested by
20 someone they knew were more likely to have no recall of the
21 abuse."

22 And then one other thing. This does sort of a survey of
23 the studies, and they say: "The majority of studies from the
24 experimental psychology literature suggest that adult memories
25 for any events before the age of three years are rare and they

1 attribute such childhood amnesia to developmental processes and
2 immaturity of the nervous system."

3 Is that something you're familiar with?

4 A. What year is that?

5 Q. The studies that they're referring to, there are a bunch
6 of them. It looks like they go from the fifties through the
7 nineties. This report, itself, is from 1994.

8 A. That information is outdated, and the reason for that
9 is --

10 Q. So if I said it was from 2014, would you have a different
11 response?

12 A. Well, I think the results would be different, because we
13 know now different things about the impact to the brain from
14 early childhood trauma. So, this is all the neuroscientific
15 studies. In fact, kids are more vulnerable to the effects of
16 trauma between the ages of 0 to 5, more specifically 0 to 3.
17 And I'm not talking about concrete memories, I'm talking about
18 the impact that it has on their brain development and then
19 their neurobiological functioning.

20 So what happens is, during those critical timeframes for
21 the brain to development, when a child is in a neglectful or an
22 abusive or traumatic environment, it alters the way their body
23 responds to stress. They have an adrenaline rush that goes
24 over the brain. They have neurotransmitters that form at the
25 base of the brain that don't work correctly, and then those

1 neurotransmitters later on are what help regulate our body and
2 our brain. And then the parts of the brain that do form aren't
3 formed correctly, and then what is formed doesn't function the
4 way that it's supposed to.

5 And so all of the research that was done throughout the
6 nineties where they've actually done functional MRIs and PET
7 scans, you can see the difference between the brain scan of a
8 child who wasn't --

9 Q. Do you have a specific study that you could refer me to?

10 A. What I can refer you to is the work of Dr. Bruce Perry.

11 Q. P-e-r-r-y?

12 A. Yes. And the work of Bessel van der Kolk.

13 Q. Can you spell that?

14 A. Bessel is B-e-s-s-e-l, and van der Kolk is v-a-n, next
15 word d-e-r, and next word, K-o-l-k.

16 Q. Okay. Thank you very much.

17 THE COURT: Is there any redirect?

18 MS. ONG: Just briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. ONG:

21 Q. All right, Ms. Kenney, I just want to briefly go over some
22 of the stuff that Ms. Katze asked you about on
23 cross-examination.

24 She asked you if you had spoken to the defense. Did
25 anyone from the defense -- did Ms. Katze or anyone from her

1 office reach out to speak to you prior to coming here today?

2 A. No.

3 Q. She also asked you about the documents that you had
4 reviewed, and I'm just going to -- I think she only mentioned
5 the Government pleadings, but in addition to those pleadings,
6 you also reviewed portions of the PSR and the 3rd Addendum to
7 the PSR, the 4th Addendum, the 5th Addendum, and the 6th
8 Addendum; is that correct?

9 A. I don't know if I did the 6th Addendum. I think I just
10 did the 5th.

11 Q. I think you only got to the 5th, yeah. There was a 6th,
12 but it had nothing of relevance, so I think you're correct.
13 Yes, the 5th Addendum, Document 108.

14 A. Yes.

15 Q. Okay. I just want to quickly go through this, but I think
16 she was talking about some of the additional trauma that A.M.
17 and M.M. may have received by parental neglect. You did have
18 an opportunity to go through the PSR, and I believe in the PSR
19 it lays out that for the nine months that the Defendant was
20 living with their parents, he was their primary caregiver. Do
21 you recall that?

22 A. I do recall that.

23 Q. All right. And so if they were undergoing any neglect at
24 that time, it would be as a result of him?

25 A. That's my understanding.

1 Q. Okay. And then just briefly going back to the -- I just
2 have it written here as A-4. I don't know, is it the access
3 scale? I have too many notes.

4 The A score -- I'm sorry. Not that, but the scale that we
5 got from the Adverse Childhood Experience Study. You had
6 assessed them at a Level 4; is that right?

7 A. Yes, just based on the information that I have about the
8 Defendant's case.

9 Q. And so why are they at A-4?

10 A. Because based on what I read, they, at his hands, suffered
11 physical abuse, emotional abuse and psychological abuse, and at
12 least one form of neglect.

13 Q. Okay. And so having them both at A-4 -- we already went
14 through all the different treatments that they're currently
15 undergoing. Someone who is an A-4 on that scale, are all of
16 those treatments conducive to somebody who is at that level?
17 would all of those be treatments that you would recommend for a
18 child that was at the A-4 -- I don't want to say it
19 incorrectly. It's a scale?

20 A. Yes. They have an A-4 score, yes. It seems like they
21 would be appropriate treatments and necessary treatments.

22 Q. And I know that Ms. Katze went through a lot of research
23 with you. I just want to clarify. I think the study that she
24 had was from 2003, and then she was going through some other
25 studies. How much has psychology evolved in the last 20 years?

1 A. Leaps and bounds.

2 Q. So research that we had 20 years ago may not necessarily
3 be correct today?

4 A. That's right.

5 Q. All right. And she also made a lot to do about, you know,
6 is less treatment better, are we imposing too much treatment on
7 victims. That's at least what I gathered.

8 From the facts that you've reviewed in this case, is the
9 level of treatment that A.M. and M.M. are currently undergoing,
10 in your professional opinion, appropriate?

11 A. Yes.

12 Q. Why?

13 A. Based on the complexity of their needs and the fact that
14 their trauma is interpersonal in nature, it happened at a very
15 young age, the more services we can get in the sooner, the
16 better the prognosis is going to be. So there's nothing that
17 leads me to believe that they're receiving inadequate treatment
18 or not enough treatment or too much treatment.

19 Q. All right. And I think she also talked to you about how,
20 you know, it's more likely that victims who undergo trauma at a
21 young age are not likely to recall the abuse. Do you recall
22 that line of questioning?

23 A. Yes.

24 Q. From the facts that you've reviewed in this case, we know
25 that both the children here have memories of the actual abuse.

1 A. That's my understanding.

2 Q. Okay. And so in a circumstance where you know that the
3 young child actually remembers what happened to them, are you
4 going to take a different treatment course than perhaps someone
5 who the memories are suppressed and they don't currently
6 remember the abuse?

7 A. Yes.

8 Q. And in the circumstance where a child actually remembers
9 the abuse, is it fair to say that they're probably going to
10 have to undergo more extensive treatment?

11 A. Probably.

12 Q. I think some of the studies that Ms. Katze was referring
13 to, you pointed out that in a lot of those there's only one
14 type of trauma that they are basically trying to study?

15 A. Yes. At least early on in some of that research, when we
16 were looking at the evidence-based treatment movement through
17 the mental health field, a lot of those studies were samples
18 that were not real life. It's not what we really see in our
19 practice.

20 Q. And here in this case, how many different types of trauma
21 did you identify?

22 A. Four, at least, just from the adverse childhood
23 experience.

24 Q. So at least four. So those studies are not relevant to
25 the issue that we have here today?

1 A. Not the studies that would say that the treatment needs of
2 these types of children could be remediated in 12 sessions or a
3 couple months of treatment.

4 Q. All right. And just to be clear, how many years
5 experience do you have treating children who have undergone
6 similar sexual abuse?

7 A. As a therapist, almost 20.

8 Q. Twenty years. And you stated that based on your review,
9 the treatment that they are currently undergoing and the
10 estimated future therapies that they will have to undergo is
11 appropriate in your professional opinion?

12 A. Yes.

13 MS. ONG: I have no further questions.

14 THE COURT: May the witness be excused?

15 MS. ONG: Yes, Your Honor.

16 THE COURT: Thank you. You may step down.

17 I'd like to take a break, and then I'll come back and
18 I'll hear any additional argument on this. And then we'll move
19 into sentencing.

20 (Recess was held at 3:53 P.M.)

21 (In Open Court at 4:25 P.M.)

22 THE COURT: All right, Ms. Ong, I'll let you go
23 first.

24 MS. ONG: Thank you, Your Honor.

25 I think we've already been over the actual

1 sentencing. I'm sure the Court is well aware, we are asking
2 the Court to impose a sentence, the guideline sentence, of 120
3 years in this case.

4 with regard to the restitution issue, the Court heard
5 from Ms. Kenney. I think that it's obvious from her testimony
6 that she has a lot of experience in this field. She's been
7 published. She goes around both nationally and internationally
8 presenting on these types of topics. Her testimony directly
9 supports the assessments that Probation has made with regard to
10 any therapy or psychiatry for A.M. and M.M.

11 And just before I go any further, I would like to
12 thank Danielle Padilla from the Probation Office. I know that
13 she put a ton of work into this case, and I think that all of
14 the addendums, where she laid out all the documents, she should
15 be commended for that, because I know it wasn't easy to track
16 down all of these documents.

17 what Ms. Kenney testified to is that the average rate
18 of \$200 per session for each of the different types of
19 therapies that both A.M. and M.M. are undergoing comports with
20 her understanding of the normal price that you pay for those
21 types of sessions. She also testified that she agrees with the
22 current treatment plans that they're under, and she actually
23 testified that 12 years is a very conservative estimate for how
24 long these children will need to be in therapy. So I think
25 that the United States has clearly met its burden of showing

1 that those numbers are correct.

2 with regard to the causation challenge that Ms. Katze
3 is arguing, I believe she's trying to argue that because there
4 was neglect or any other abuse by the parents, the Court should
5 take that into consideration with regard to the amount. Our
6 response to that is simple. The Defendant was the primary
7 caregiver of these children for at least ten months. I believe
8 that he -- in the PSR, Paragraph 26, it says that he began
9 living with them in March of 2013, and law enforcement arrested
10 him in December of 2013.

11 They also -- in Paragraph 34, when the parents were
12 interviewed, they said that they were unaware that the abuse
13 was going on, that the Defendant was the primary caregiver.
14 One of the counts that he pled to, he admitted that he was the
15 primary caregiver. So if there's any neglect that's going on,
16 it's at his hands.

17 I mean, certainly the parents were neglectful by
18 leaving their children with him, but during that timeframe, he
19 was the primary caregiver of the children, and I think that the
20 extent of the sexual trauma that they suffered at his hands --
21 you know, I'm not going to get into all the gritty details.
22 The Court is well aware of them. But the extent of it on an
23 almost daily basis for nine months is certainly the proximate
24 cause of them having to seek these therapies.

25 And just with regard to that, Ms. Kenney testified

1 that based on her review of the Defendant's actions alone, that
2 those kids would score as an A-4, and that based on her
3 experience regardless of any other trauma that they would have
4 undergone, all of the current therapies that they are seeking
5 are appropriate and would be needed. And that assessment is
6 based solely on the conduct that she was aware that the
7 Defendant perpetrated on the young victims.

8 So I think that the Court has ample evidence in front
9 of it to find that the Defendant was not only the proximate
10 cause of the sexual abuse, but also the need for the current
11 therapy that they're undergoing.

12 with regard to the lost wages that we are requesting,
13 in the 4th Addendum to the PSR, which is Document 96, the
14 Probation Office attached all of the records that were received
15 by K.S. with regard to the income that she was receiving by
16 taking in additional foster children, and I think it shows
17 basically what was happening before December 2013, and then
18 what's happened since then.

19 Basically, what the Probation Officer did, which is
20 laid out on Page 2 of Document 88, is they took those numbers
21 and they made a conservative estimate that K.S. has lost wages
22 in the amount of \$2,200 per month, which equals out to \$26,400
23 per year, and they estimated lost wages for a period of eight
24 years.

25 Now, Ms. Katze is trying to argue that there was some

1 sort of intervening cause because the children were adopted in
2 this case. Frankly, I just -- that doesn't make any sense to
3 me. Had the Defendant not been sexually molesting the
4 children, they never would have been put into CYFD custody,
5 they never would have been placed in the foster homes that they
6 currently are in, and K.S. would have continued to receive more
7 than one foster child at the time. So I think that the
8 Defendant is the proximate cause of her lost wages.

9 The simple fact that they decided to adopt her is not
10 an intervening cause at all. I think that the way that courts
11 look at this is, it's a but for analysis. So, but for the
12 Defendant's sexual abuse of the children, they never would have
13 been placed in K.S.'s care and she would have continued with
14 the regular placements that she was taking in at that time.

15 I'd also note that as the Probation Officer stated,
16 those estimates are conservative estimates. Eight years is a
17 conservative estimate. In all likelihood, she will probably
18 continue to lose income for more time than that. But I think
19 that the records, if the Court relies on the documents from
20 La Familia-Namaste that K.S. provided, provide sufficient
21 support for the figures that are laid out by Probation in
22 Document 88.

23 So, you know, these restitution cases are always
24 difficult for a variety of reasons. I think that the case law
25 is kind of all over the place. I'm sure that Ms. Katze is

1 going to talk about Paroline. I think we already touched on
2 this at the last hearing. Paroline dealt with situations where
3 you have offenders who are removed. It's basically the
4 possessors of child pornography that was perpetrated by someone
5 else and produced by someone else. Here we have the actual
6 Defendant who was the producer, himself. So the issues that
7 Paroline set out to resolve are just inapplicable to this case.

8 I think that in the cases that we've cited, the
9 courts are unanimous. In cases such as this where the
10 Defendant is the actual perpetrator, with regard to proximate
11 cause, it's a much easier case because you know that it was the
12 Defendant who was actually sexually abusing the children and he
13 actually shared the photos of them.

14 So, we do believe -- you know, even aside from that,
15 any restitution order that the Court puts in place, in all
16 likelihood they're never going to see any of this money. The
17 Defendant doesn't have any money. I think that as a matter of
18 principle, because of the egregious nature of the abuse, it's
19 important from a principle perspective that there be a
20 significant restitution award.

21 THE COURT: AS I read the statute, the economic
22 circumstances of the Defendant are not relevant.

23 MS. ONG: That's correct, Your Honor. I think that's
24 absolutely laid out in 18 U.S.C. 2259. I guess my point is,
25 we've spent all this time and resources fighting about all of

1 this, and at the end of the day, whatever restitution order the
2 Court puts in place, these victims are not really ever going to
3 see any of that money.

4 So I would urge the Court, if the Court does have any
5 concerns about the amount, to err on the side of caution. We
6 do believe that everything we're asking for is completely
7 appropriate and sanctioned by the law, but we really want to
8 make sure that the restitution order is going to be upheld on
9 appeal. I think that we've provided the Court with all of the
10 evidence that it needs in order for it to survive appellate
11 review. But, you know, more than anything, it's just a matter
12 of principle, because in reality, they're not going to see any
13 of this money.

14 So it's our position that the amounts laid out on
15 Page 2 of Document 96 are appropriate, that the Court has all
16 the documentation and evidence it needs to make the appropriate
17 findings. I don't know if the court is planning on actually
18 stating its findings with regard to restitution today.
19 Certainly we're hoping that the Court will sentence the
20 Defendant today. But if the court feels that it needs
21 additional time to review any of Ms. Kenney's testimony or
22 anything that happened here, the Court has ninety days after
23 the judgment is entered to finalize restitution.

24 And so, unless the Court has any additional questions
25 for me, thank you.

1 THE COURT: Ms. Katze.

2 MS. KATZE: Your Honor, the Government asked for 120
3 years, and we ask for a sentence of 504 months for all the
4 reasons that we previously argued in our Sentencing Memo, as
5 well as in Sentencing Hearing Part 1.

6 So I think that the issues here with respect to
7 restitution -- one thing I want to make clear, I understand why
8 Ms. Ong would like to try to diminish the importance of
9 Paroline. But it's a Supreme Court case that's directly on
10 point and controlling in this case. The case is very clear
11 that the Defendant, and in this case, Mr. Blackburn, should be
12 liable for the consequences of his own conduct and not the
13 conduct of others. What we don't agree upon is, what is the
14 conduct of others, or how much that goes into the equation.

15 Again, Ms. Ong would like the Court to believe that
16 if you use a but for equation, that but for Mr. Blackburn's
17 abuse, the children wouldn't need the services. Well,
18 absolutely. I do not argue that. But what I argue is, there
19 are other contributing factors. It is not just Mr. Blackburn.

20 It's in the Presentence Report that the biological
21 father sexually abused M.M. It is crystal clear in the
22 Presentence Report that the parents were neglectful. Yes,
23 Mr. Blackburn was neglectful in the nine months that they
24 allowed him to be the caretaker to the point that he was able
25 to sexually abuse those children and they, according to them,

1 had no idea whatsoever, but those children had two, and almost
2 three years of their life that those parents were so
3 neglectful.

4 Those parents were so neglectful and abusive that
5 their parental rights were terminated, and you heard the
6 Government's expert say what a hurdle that is to have parental
7 rights terminated. So clearly the abuse and the neglect was
8 substantial from the parents. I'm not saying that the abuse
9 was not --

10 THE COURT: Let's assume that there was abuse from
11 the biological parents. And again, their parental rights were
12 terminated, and honestly, they should have been prosecuted,
13 although they would have had to have been prosecuted in state
14 court, because based on the record before me, there was nothing
15 to give rise to federal court jurisdiction. But under the
16 causation analysis, wouldn't Mr. Blackburn's conduct be the
17 independent intervening cause?

18 MS. KATZE: No, Your Honor. There's no way to say
19 that. Even the Government's expert said, there's no way to
20 parse that out. You can't say -- and here's why we can't say
21 that. If we had exemplary parents who did nothing but love
22 their children and care for their children, and Mr. Blackburn
23 still sexually assaulted them, yes. That's a straight
24 causation.

25 But when we have an end product, the children, who

1 have been damaged, and injured, and hurt, we have to look at,
2 okay, what caused that damage, that injury, that hurt.
3 Mr. Blackburn did, no argument. But we can't deny that it's
4 the conglomeration of the abuse and the neglect and the hurt
5 that caused it.

6 THE COURT: Isn't it also restitution is joint and
7 several? So if you're saying part of it should be the parents,
8 the biological parents, then if you apply -- well, I don't
9 know. That's in civil.

10 MS. KATZE: I was going to say, I don't think that's
11 necessarily the case, because I think Paroline controls and
12 Paroline is very clear. And I realize that kind of puts an
13 onus on the Court, because the Court -- I don't know if it
14 sounds like a math equation, but the Defendant should be liable
15 for the consequences of his own conduct, not the conduct of
16 others.

17 So I guess the question is, where would that leave
18 the Court? Do you have to say, okay, well, Mr. Blackburn was
19 60 percent responsible, each parent was 20 percent responsible,
20 therefore if I think the total restitution is this,
21 Mr. Blackburn would pay 60 percent. I don't know that that's
22 necessarily the answer, but that's certainly an approach,
23 because I think it recognizes the fact that the natural parents
24 contributed to the outcome, and the treatable outcome.

25 And again, not in any way arguing that that excuses

1 or dismisses Mr. Blackburn's conduct. His conduct is
2 reprehensible and the cause of their pain and suffering, but
3 not the only cause. And I think the Supreme Court law is clear
4 that we have to look at everything. We can't just say, oh,
5 this was horrible what Mr. Blackburn did, therefore we don't
6 have to give a legal analysis under Paroline and we don't have
7 to figure out if there's contribution. It was horrible,
8 therefore it's all his restitution. That's not the law. Your
9 Honor, I think that's the issue of the natural parents and the
10 contribution.

11 The next issue is, as Ms. Ong stated, as far as
12 restitution with respect to reimbursement for treatment and
13 counseling, and also lost wages, I realize this isn't a popular
14 argument to make, because we have somebody who's been sexually
15 abusive, and we have two sets of parents who lovingly adopted
16 children. I recognize that.

17 But still, we can't let the awfulness of what
18 Mr. Blackburn did, we can't let the awfulness of his conduct
19 blind us to the law. We still have the law to look at, and we
20 still have to look and see, why would the parents be paying for
21 the counseling. When the children were in foster care, the
22 State was paying for their counseling, one.

23 THE COURT: Well, the State could have made a request
24 for restitution, could they not?

25 MS. KATZE: I don't know that they could have,

1 necessarily. I don't know that they --

2 THE COURT: well, I just recently -- it's funny, I've
3 been dealing with restitution a lot lately. Although this was
4 a civil case, you may recall the Metropolitan Courthouse case.
5 I got a media request wanting to know all this. So I made a
6 ruling, after giving notice to everybody, and nobody objected,
7 that it was public information. But clearly the State of New
8 Mexico was the victim there.

9 And in terms of the restitution payments that were
10 made, there were over \$2 million in restitution payments made
11 on that case, but it all went to the State of New Mexico,
12 because the taxpayers of the State were the ones that were out
13 the money, or the State was out of the money that was in that
14 public corruption case.

15 So if the children were still in foster care, and
16 CYFD had total responsibility for all the bills paid, I don't
17 see why, if CYFD wanted to seek restitution, why CYFD wouldn't
18 be entitled to it, or the State.

19 MS. KATZE: I don't know that they would be. But the
20 point is, that's not the issue that we have here right now. We
21 have the issue of the adoptive parents saying, here's these
22 treatments costs and we should be reimbursed for them.

23 THE COURT: well, if the biological parents' rights
24 had not been terminated, would you object if the biological
25 parents were seeking restitution?

1 MS. KATZE: Well, I think it would depend on the
2 scenario, right, of what had happened. Was anybody paying for
3 treatment and counseling for the children, what was the
4 situation as far as treatment costs and payment and insurance.

5 THE COURT: But the victims here were, you know,
6 infant children -- or toddlers. I'm sorry; toddlers at the
7 time. They're older now. They're the victims. But obviously
8 if restitution -- again, theoretically speaking, if restitution
9 was collected and the Clerk's office is going to send a
10 restitution payment, you don't send it to a minor child.
11 Somebody is the guardian or custodian for that child.

12 MS. KATZE: I understand that if you did order it, it
13 would go to the parents in place of the children while they're
14 minor children.

15 THE COURT: So what difference does it make that they
16 have adoptive parents?

17 MS. KATZE: Because our argument is that their
18 counseling was being paid for by the State. They got adopted,
19 and now the counseling is not being paid for. The adoption is
20 the intervening event. Same thing -- well, let me just say one
21 more thing about counseling.

22 I think from the Government's expert, it's clear
23 that -- I'm not arguing that the children don't need
24 counseling. Of course they need counseling. But it's so
25 speculative and prospective that we don't know. It's possible

1 they might need counseling for 20 years. It's also possible
2 that it's in their best interests that within the next couple
3 of years, the counseling seriously drops off.

4 I strongly believe in the idea of this constant
5 explosion therapy of the triggers, of keeping something so
6 present, trauma so present in somebody's mind that they don't
7 get past it. I'm not arguing that people get no therapy. I'm
8 saying to assume that intensive therapy is always the best way
9 to go, I think, is -- obviously Ms. Kenney has an interest in
10 making that argument. It's her field. It's her business. I
11 just don't know that we can say that that is in the best
12 interests of the child, and that you can make that decision
13 now, and that as a result of the Government putting on
14 Ms. Kenney, that they met their burden of proving that that
15 would, in fact, be the cost in the future. So that's the
16 counseling.

17 Your Honor, the second thing is the lost wages.
18 Basically, not getting the money that they would have gotten
19 because they would have taken more foster children. They made
20 a decision to adopt the child knowing that the child was high
21 needs, and it's wonderful that they did that, but I feel
22 certain that they didn't do that not knowing that now they're
23 not going to be able to get \$2,000 a month for having more
24 children in their house. They made that decision. And there
25 is no evidence that they can't get work in the house, or even

1 outside the house.

2 Probation reported that M.M. is doing well. She's
3 doing well in school. She doesn't even have an IEP, she's
4 doing that well. They reported that she goes to play dates,
5 that she has friends. I'm glad to hear she's doing well. And
6 I can totally appreciate that her mom is super protective of
7 her and does want to be available, but we don't have any
8 evidence to indicate that her mother does have to be available
9 24 hours a day, 7 days a week, that that is actually true. So
10 I think requesting lost wages the way they have, for the amount
11 of time they have, I don't think is appropriate and would fall
12 under the statute.

13 Your Honor, if I may have just one moment.

14 Just one last thing about the Reactive Attachment
15 Disorder. We provided information in our pleadings that we
16 filed, and Ms. Kenney agreed with that, that the Reactive
17 Attachment Disorder comes from lack of love in your life. So
18 obviously Mr. Blackburn contributed to the lack of love in his
19 life, although oddly, I will just tell you, as an aside, from
20 witnesses that we spoke to, there were some other sort of
21 transient people who lived in the house, and despite the abuse,
22 they said that the only person who did show care and love to
23 the children was Michael Blackburn. But I'm not asking you to
24 reward him for that. But that comes from parents who were not
25 showing love to their children.

1 So, Your Honor, based on those arguments, I am
2 asking -- and more specifically, it's laid out more completely
3 in our Sentencing Memo and in our subsequent pleadings that we
4 filed in response to the Government's responses, and in
5 response to Probation's addendums. That is our argument.

6 I have one last request, Your Honor. If you would
7 make a recommendation that Mr. Blackburn be allowed to serve
8 his sentence in FCI Tucson.

9 THE COURT: Refresh my memory, again. There have
10 been a lot of pleadings filed in this case. Did you take a
11 position at all on the amount of restitution that you thought
12 was appropriate?

13 MS. KATZE: I don't think we ever said specifically
14 this should be the amount. I know that there were some amounts
15 as we went along that have since been resolved, as far as like
16 schooling. Everybody agreed that's not appropriate.
17 Prospective criminal justice costs, we agreed those weren't. I
18 don't think -- I'd have to look at my pleadings, and I can
19 contact the Court and Ms. Ong.

20 THE COURT: That's fine.

21 MS. KATZE: I just don't -- I think you're right. I
22 don't remember saying we think this is appropriate.

23 THE COURT: Okay. I do have a question for Ms. Ong.

24 As we were going through the analysis here, if the
25 children were in CYFD custody, or even maybe at some point,

1 either now or later, if they qualify for social security
2 disability, I mean, if a Government agency is covering some of
3 these costs, the Government agency could request status as a
4 victim to collect restitution; right?

5 MS. ONG: That's correct. And I think specifically
6 in this case, if you look at 18 U.S.C. 2259(b)(4)(A)(ii), it
7 says: "The issuance of a restitution order under this section
8 is mandatory. The fact that a victim has, or is entitled to,
9 receive compensation for his or her injuries from the proceeds
10 of insurance or any other source." So I think the statute is
11 clear. It doesn't matter if the State has paid for stuff,
12 they're still entitled. I think the Court is correct. And if
13 I could just briefly respond to some of Ms. Katze's arguments.

14 with regard to the causation factor, with any type of
15 neglect or abuse that the parents perpetrated on the children,
16 what the Court has heard today is that all of these estimates
17 are extremely conservative estimates of what the actual cost is
18 going to be. And so I think that the Court could find that the
19 requested costs are appropriate because there is evidence that
20 more than likely they're going to have to receive treatment for
21 an even longer period of time than the 12 years that we're
22 taking into account. So any type of causation that the parents
23 may have contributed to in them needing therapy has already
24 been factored into the equation by the Court making a very
25 conservative estimate with regard to what the cost of therapy

1 is here.

2 Then just taking Ms. Katze's second argument
3 regarding the intervening cause to its logical conclusion, I
4 mean, under that theory, if we look at §2259, one of the things
5 that you can request are attorney's fees. If you take her
6 argument at face value, then basically, if I'm a victim who's
7 entitled to hire an attorney in this context, because I'm
8 making the decision to hire the attorney and, therefore, taking
9 that cost on myself, that's an intervening cause. So I think
10 that if you look at the plain language of the statute, taking
11 her argument to its logical extreme just doesn't make any
12 sense.

13 I mean, some of the other things here. Necessary
14 transportation. Temporary housing. Child care. You know,
15 okay, because I'm making an active decision to put my child in
16 child care rather than taking them to the courthouse to be
17 present at the hearing, that's something that I'm intentionally
18 doing, a cost that I'm intentionally incurring on myself, and
19 so therefore, it's an intervening cause. I mean, that's
20 basically what she's arguing. So I think that if you look at
21 the plain language of the statute, it completely contradicts
22 that argument. I just wanted to point that out to the Court.

23 THE COURT: One last question to you. Obviously the
24 biological parents abandoned these children. They left them
25 with Mr. Blackburn to the horrible detriment of these children.

1 I'm aware no one is disputing that the parental rights to the
2 biological children were terminated.

3 where else in the record is there -- do you agree
4 there is something in the record regarding what Ms. Katze said
5 about the biological parents abusing, sexually abusing the --

6 MS. ONG: In the PSR, there is a paragraph.

7 THE COURT: It's in the PSR? That's fine. I just
8 wanted to nail that down.

9 MS. ONG: It's in the PSR, Your Honor.

10 And just one last point. I know that Mr. Blackburn
11 is asking for a designation to Tucson. I think this came up at
12 the last hearing, but I just wanted to remind the Court that
13 K.S. actually made a request to the Court that you not
14 recommend that designation because she has a lot of family that
15 lives in Tucson, and that upsets her. So I just wanted to
16 bring that to the Court's attention.

17 THE COURT: All right. Ms. Katze, I'll ask you and
18 Mr. Blackburn to come up to the podium.

19 Is there anything else?

20 MS. KATZE: No, Your Honor, just that if K.S.'s
21 family isn't in the Federal prison in Tucson, I would hope that
22 wouldn't be an issue.

23 THE COURT: I can't remember if I said this at the
24 previous hearing, but if not, I'll formally accept the plea
25 agreement that's in this case.

1 we had an earlier hearing on what the guideline
2 sentence would be. I'll note -- and again, I'm going to quote.
3 This is Document 81 at Page 2. I was referencing the
4 sentencing table, and I said: "The highest offense level in
5 the sentencing table is 43, and the guideline sentence for a
6 Defendant with an offense level 43 is life in prison regardless
7 of the criminal history category."

8 And then I go on to state: "If the Court were to
9 sustain the two objections to the Presentence Investigation
10 Report previously raised by the Defendant, his offense level
11 would still be 43, criminal history category 1, which results
12 in a guideline sentence of life in prison."

13 Now, ultimately I made the finding that the
14 Defendant's correctly calculated guideline sentence is 1440
15 months, or 120 years, but I'll note that even if I had
16 sustained the Defendant's objections, the guideline sentence
17 would be offense level 43, which is still life in prison.

18 So in order to get to a sentence of 504 months or, if
19 my math is right, that's 42 years, there would have to be a
20 downward variance. As far as any kind of departure under the
21 guidelines, I don't think there is any that would allow a
22 departure analysis. So that's what the guideline sentence is.

23 Now, ultimately the controlling statute for purposes
24 of sentencing is 18 United States Code Section 3553(a)(1)-(7),
25 and it says, Imposition of a Sentence. And then Subparagraph A

1 is, "Factors to be considered in imposing a sentence."

2 The statute states: "The Court shall impose a
3 sentence sufficient, but not greater than necessary to comply
4 with the purposes set forth in Paragraph 2 of this subsection.
5 The Court, in determining the particular sentence to be
6 imposed, shall consider, (1) the nature and circumstances of
7 the offense" -- or offenses, in this case -- "and the history
8 and characteristics of the Defendant; (2) the need for the
9 sentence imposed, (A) to reflect the seriousness of the
10 offense, to promote respect for the law, and to provide just
11 punishment for the offense; (B) to afford adequate deterrence
12 to criminal conduct; (C) to protect the public from further
13 crimes of the Defendant; and (D) to provide the Defendant with
14 needed educational or vocational training, medical care, or
15 other correctional treatment in the most effective manner."

16 And then Paragraph 3 is the kinds of sentences
17 available. Paragraph 4 is the kinds of sentences available and
18 the sentencing range established. And then it goes on to talk
19 about the Sentencing Commission and what the Sentencing
20 Commission has promulgated, and obviously I've considered that.

21 Number 6 is: "The need to avoid unwarranted sentence
22 disparities among defendants with similar records who have been
23 found guilty of similar conduct." And 7: "The need to provide
24 restitution to victims."

25 Now, let me just go in reverse. Restitution, again,

1 that's mandatory in this case, and I'm going to touch on that
2 later, but obviously I've considered the statute on restitution
3 and evidence, and the arguments that were advanced on what are
4 the appropriate amounts of restitution.

5 (6): "The need to avoid unwarranted sentence
6 disparities among defendants with similar records who have been
7 found guilty of similar conduct." As a general rule, a
8 guideline sentence satisfies that, but if that was totally
9 controlling, then you could never do a downward variance or an
10 upward variance.

11 The factor, or the subfactor about providing the
12 Defendant with needed educational or vocational training,
13 medical care, or other correctional treatment in the most
14 effective manner, to me that really doesn't come into play. So
15 it's the earlier part of the statute that really is what I'm
16 focusing on.

17 Now, the nature and circumstances of the offenses and
18 the history and characteristics of the Defendant. I'm not
19 going to -- I was the Judge and I heard all the evidence from
20 the suppression hearing. I didn't look at all the photographs,
21 but I looked at the two that were introduced at the suppression
22 hearing, and to say that those photographs were disturbing is a
23 gross underestimate.

24 In the Government's Sentencing Memorandum, beginning
25 on Page 5, Page 6, Page 7, there's a very accurate description

1 of the nature and circumstances of these offenses, and I'm not
2 going to repeat, but I'll reference the description. It's in
3 Document No. 77.

4 I'll note that if you look at the five offenses that
5 the Defendant pled guilty to in this plea agreement, Count 1 is
6 distribution of child pornography in violation of 18 United
7 States Code Section 2252(a)(2). The statutory, just singly for
8 that offense, the statutory range of incarceration under the
9 statute is 5 to 20 years.

10 Count 2, receipt of child pornography in violation of
11 18 United States Code Section 2252(a)(2), the statutory range
12 of incarceration singly for that count is 5 to 20 years.

13 Count 3, possession of child pornography in violation
14 of 18 United States Code Section 2252(a)(4)(B), in terms of the
15 statutory range, it's not more than 20 years.

16 Count 4, production of child pornography in violation
17 of 18 United States Code Section 2251(a), the range for that
18 single count is 15 to 30 years.

19 And Count 5, production of child pornography by
20 custodian in violation of 18 United States Code Section
21 2251(B), the statutory range for that count is 15 to 30 years.

22 Now, these references to the statutory terms of
23 incarceration, they don't take into account any grouping rules,
24 they don't take into account any of the guideline
25 characteristic enhancements that were applied by the Probation

1 office, but obviously when you consider the nature and
2 circumstances of the offenses in this case, these are serious
3 offenses.

4 In terms of the criminal conduct exhibited by the
5 Defendant towards these toddlers, I'll just say this. I've
6 been a Judge in this Court for 15 and a half years, so I've
7 dealt with a number of child pornography cases and sexual abuse
8 cases. Before that, I was a State District Judge for seven and
9 a half years and I did a lot of CYFD cases and I had to
10 terminate a number of parents' parental rights because of abuse
11 and neglect. So I've seen a lot. But in terms of the abuse,
12 the sexual abuse on these children, and then the counts of
13 child pornography that are in the indictment, this is about the
14 worst I've ever seen.

15 Now, in terms of the need for the sentence imposed to
16 reflect the seriousness of the offense, I've already discussed
17 that. To promote respect for the law, to provide just
18 punishment for the offense, that sentencing factor, in my view,
19 based on the conduct of the Defendant in this case, that
20 supports a sentence of life in prison.

21 Subsection B, to afford adequate deterrence to
22 criminal conduct. You know, from presiding over this child
23 pornography case and others, in the internet, I don't know how
24 else to describe it, but there is a segment of the internet,
25 I'll analogize it to a medieval dungeon, but there is the

1 sharing of these child pornographic images. It's horrendous.
2 And for the children that are portrayed in this, the
3 consequences can be lifelong. So from the deterrent component,
4 to deter this type of horrendous criminal conduct, that factor,
5 a life sentence, that factor supports -- or that goal of
6 sentencing supports a life sentence.

7 To protect the public from further crimes of the
8 Defendant. I'll reference an earlier -- I believe it was at
9 the sentencing hearing that the Government introduced Exhibits
10 31, 32, 33, 34 and 35. These were text messages that the
11 Defendant -- that went back and forth between the Defendant and
12 his ex-wife regarding the Defendant's own minor child, and I'm
13 not going to repeat it, the language in there is horrendous,
14 but the threats that the Defendant made to his own minor child
15 suggests that there's a strong need to protect the public from
16 further crimes of the Defendant. And therefore, that goal of
17 sentencing supports a life sentence.

18 And then, again, I've already touched on Subfactor D
19 and the other sentencing factors, so I go back to the fact that
20 the requirement that I have is that the Court shall impose a
21 sentence sufficient, but not greater than necessary to satisfy
22 the goals of sentencing.

23 So I will find that a guideline sentence of 120 years
24 is a sentence that is sufficient, but not greater than
25 necessary to satisfy the goals of sentencing.

1 Alternatively, if on appeal my overruling of the
2 objections that were made earlier at that sentencing, and if it
3 turns out that the Defendant's, instead of 120 years, the
4 Defendant's guideline offense level should be offense level 43,
5 category 1, then alternatively I will find that offense level
6 43, category 1, a sentence of life is a sentence that is
7 sufficient but not greater than necessary to satisfy the goals
8 of sentencing.

9 For purposes of any kind of departure analysis, I do
10 not find that there is anything out there that would take this
11 Defendant out of the heartland of cases that would warrant any
12 kind of departure. I don't even think there's any departure
13 analysis under the guidelines that would be applicable to this
14 Defendant, and obviously I do not believe a downward variance
15 to a sentence of 42 years is warranted.

16 So as to each of Counts 1, 2 and 3 of the Indictment,
17 the Defendant is committed to the custody of the Bureau of
18 Prisons for a term of 240 months. As to Counts 4 and 5, the
19 Defendant is committed to the custody of the Bureau of Prisons
20 for a term of 360 months. Those terms shall run consecutive to
21 each other for a total term of incarceration of 1440 months, or
22 120 years.

23 I do recommend the Defendant participate in the
24 Bureau of Prisons' sex offender program. I'll note the
25 Defendant's requested designation to Tucson. I'll note that

1 one of the child victim's parents expressed concern over any
2 designation to Arizona. Considering -- I'm not going to make
3 any recommendation towards designation, other than that the
4 Bureau of Prisons designate the Defendant to the appropriate
5 facility taking into account security concerns, but also
6 considering the nature of these horrendous offenses, a sentence
7 where there are other sex offenders, because obviously there
8 are certain types of facilities where if the Defendant were
9 placed at, he would be potentially subject to being a victim or
10 attacked by other defendants.

11 I'm also going to make the recommendation -- well,
12 since I'm imposing a life sentence, I'm not going to impose
13 conditions of supervised release, other than to note that if
14 there were conditions of supervised release to be imposed, they
15 would be a lifetime of supervision. In the event that the
16 conviction or the sentence is reversed to where conditions of
17 release would be appropriate, then I would impose those at the
18 appropriate time.

19 In terms of additional recommendations to the Bureau
20 of Prisons, I recommend that the Bureau of Prisons prevent the
21 Defendant from ever contacting the child victims, and that
22 would extend for all the Defendant's life. So that would be
23 not only when the victims are children, but when they become
24 adults. And I also recommend that the Bureau of Prisons make
25 sure it monitors the Defendant so that he does not have any

1 contact with any other minor -- any type of contact whatsoever
2 with any other type of minor children, including his own
3 biological child.

4 And I'll also recommend, considering the nature of
5 these offenses, that the Bureau of Prisons not allow the
6 Defendant to have any internet access, or if the Bureau of
7 Prisons does, that any internet access be closely monitored.

8 Now, I'm not going to impose any fine in this case
9 because, again, I think restitution is more important than a
10 fine. I do have to impose a Special Penalty Assessment of \$100
11 as to each count of conviction for a total penalty assessment
12 of \$500, and I'm required to state that it's due immediately.

13 The Defendant is subject to the provisions of the
14 Justice for Victims of Trafficking Act of 2015. That does
15 require the Court to assess an amount of \$5,000 on any indigent
16 person convicted of an offense under 18 U.S. Code Chapter 77,
17 109a, 110, 117, or Section 274 of the Immigration and
18 Nationality Act. If there's a finding of indigency, then I'm
19 not required to impose that \$5,000 assessment. I will make the
20 finding that the Defendant is indigent, and therefore, that
21 \$5,000 assessment will not be imposed.

22 Now, regarding restitution. It is mandatory in this
23 case, and under Section 2259, it does state, first, that
24 restitution is proper to the extent of Defendant's offense
25 conduct that proximately caused the victims' loss. And it also

1 states -- and I'm recognizing, as was noted, that the
2 likelihood that the victims will ever receive anything other
3 than maybe nominal amounts, that that's the likelihood, but the
4 statute basically says: "The Court may not decline to issue an
5 order under this section because of the economic circumstances
6 of the Defendant."

7 Now, I am going to enter -- I'll have to make
8 findings of fact and conclusions of law based on the evidence
9 that was presented and the arguments, but I will, as a
10 preliminary matter, I'll find that the Government has met its
11 burden by a preponderance of the evidence that justifies the
12 total restitution amount of \$430,800. I'll detail the findings
13 on that in a subsequent decision. Given the Defendant's
14 status, his indigency status, and the huge sum of restitution,
15 any interest will be waived on the restitution.

16 Finally, I must advise -- or well, I'll note,
17 pursuant to the plea agreement -- and what I'm going to do is,
18 I flagged that. The Defendant entered into a conditional
19 appeal, and in Paragraph 23 of his plea agreement, it states
20 this:

21 "The Defendant is aware that 28 United States Code
22 1291 and 18 United States Code Section 3742 afford a Defendant
23 the right to appeal a conviction and the sentence imposed.
24 Acknowledging that, the Defendant knowingly waives the right to
25 appeal the Defendant's convictions, including any fine, terms

1 of supervised release, as well as any order of restitution
2 entered by the Court. In addition, the Defendant agrees to
3 waive any collateral attack to the Defendant's convictions,
4 including any fine, pursuant to 28 United States Code Sections
5 2241, 2255, or any other extraordinary writ, except on the
6 issue of defense counsel's ineffective assistance."

7 It then states: "The Defendant reserves the right to
8 appeal the Court's ruling on his motion to suppress as stated
9 and referenced in Paragraph 22, and also reserves the right to
10 appeal the sentence of imprisonment that he receives in this
11 case."

12 So finally, I must advise the Defendant that within
13 14 days of the entry of the judgment in this case, you have the
14 right to appeal the matters that you reserved or preserved in
15 your plea agreement. You also have the right to apply for
16 leave to appeal in forma pauperis if you're unable to pay for
17 the cost of an appeal.

18 All right, is there anything else from the United
19 States on this matter?

20 MS. ONG: Yes, Your Honor, just briefly. I just
21 wanted to clarify some of the Court's findings.

22 with regard to the Court's alternative finding, I
23 believe that the Court stated that even if it had not -- if it
24 had granted the Defendant's objections with regard to where the
25 Defendant would fall in the guidelines, that you would impose a

1 sentence of life. I know this is kind of a technicality, but I
2 think technically that because the statute of conviction
3 doesn't allow for a life sentence, it would still be a 120 year
4 sentence.

5 THE COURT: I agree with you, but as I recall the
6 pleadings, Ms. Katze argued that even if I sustained the
7 objection, the guideline offense level would be 43, which on
8 the sentencing table is a sentence of life in prison.

9 MS. ONG: That's correct. And under Chapter 5 of the
10 guidelines, if the sentence is life, but the statute of
11 conviction does not allow for life, then the Court stacks the
12 counts. So I just wanted to clarify that you would impose a
13 sentence of 120 years.

14 THE COURT: Yes, but what I was saying is, if this
15 comes back and the guideline sentence is what Ms. Katze argued,
16 it's still life. In other words --

17 MS. ONG: It would be the same sentence that the
18 Court is imposing today.

19 THE COURT: Exactly. But I agree. I mean, again, I
20 went through the analysis, I agreed with the Government that
21 the guideline sentence is 120 years. That's what the judgment
22 is going to reflect.

23 MS. ONG: All right. Thank you, Your Honor.

24 And then with regard to the supervised release, I do
25 believe that even if the Court is imposing a high sentence,

1 under the statute, supervised release is mandatory. So I would
2 just ask the Court to actually impose supervised release. I
3 think that under the statute, the Court has to impose at least
4 five years. I think the Court said it would impose lifetime.

5 THE COURT: Do you agree with that?

6 MS. KATZE: I don't have my statute book with me, and
7 I haven't had a client get life.

8 MS. ONG: I'm only just bringing this up because I
9 don't want them to argue later on that there were any types of
10 defects with the Court's sentence.

11 THE COURT: I always thought that it was kind of an
12 exercise in futility in a life sentence to impose terms of
13 supervised release, but if I have to impose supervised release,
14 then it would be a supervised release for a term of life as to
15 each count, each of the five counts, to run concurrent.

16 There's the standard conditions of supervision,
17 including the standard sex offender conditions adopted by the
18 District of New Mexico on November 17, 2011. There's also
19 mandatory conditions. And then the Defendant must comply with
20 the special conditions imposed in Attachment A.

21 I've already covered the restitution, but I do need
22 to say this. Again, on restitution, recognizing the
23 Defendant's indigent and will be incarcerated, Probation has
24 recommended restitution to be paid in monthly installments of
25 \$200 or 20% of the Defendant's monthly income, whichever is

1 greater. I'll reflect that in the Judgment, recognizing that
2 at most the restitution will probably be whatever is in the
3 Defendant's inmate account. I think the Bureau of Prisons
4 deducts part of that. But I am required to put a restitution
5 amount.

6 And I think that's it. Does that address the
7 Government's concerns?

8 MS. ONG: Yes, Your Honor. I just have two other
9 points to bring up. I know the Court waived this anyway, but
10 the Trafficking Act was passed in 2015. The Defendant's crimes
11 were committed in 2013. So I think technically that wouldn't
12 apply to him.

13 THE COURT: I'll make a finding that it would not
14 apply. If it did apply, the \$5,000 assessment would be waived
15 because he's indigent.

16 MS. ONG: Thank you, Your Honor. And then just the
17 last point, I know that the Court basically imposed a condition
18 that the Defendant not have any internet access when he's at
19 BOP.

20 THE COURT: Those weren't conditions, those were
21 recommendations to the Bureau of Prisons. Like any
22 recommendations, they're free to accept or reject them.

23 MS. ONG: All right. I understand that that's a
24 recommendation, but is that recommendation just based on the
25 fact that all of the Defendant's crimes were basically

1 committed on the internet, that he used the internet to
2 facilitate the crimes that he's pled guilty to?

3 THE COURT: Correct, that's the reason for the
4 recommendations.

5 MS. Katze, anything else from you?

6 MS. KATZE: Just one thing. Was there a
7 recommendation to the Bureau of Prisons that he not be allowed
8 to write to his son? Because I'd like to address that.

9 THE COURT: Well, the Presentence Report indicates
10 that the custodial parent has an order of protection.

11 MS. KATZE: I think that no longer exists. And I
12 have spoken to the custodial parent, and she is okay with him
13 writing letters to the son. He's obviously never going to have
14 access to his son, he's never going to see him, but I know that
15 in his obviously completely bleak future, that was one thing
16 that he wanted to do. And I spoke to her, and she said she
17 would be fine with him writing letters.

18 THE COURT: Here is my recommendation to the Bureau
19 of Prisons. Again, once the son becomes an adult, then it's up
20 to the son whether or not he wishes any contact from his
21 father.

22 I'll recommend that the Bureau of Prisons determine
23 whether the custodial parent objects. If the custodial parent
24 does not wish any contact by the Defendant to the biological
25 child, then the custodial parent's wishes should control. That

1 would be my recommendation. But I'm not the one -- it's up to
2 the Bureau of Prisons.

3 MS. KATZE: Okay. Thank you.

4 THE COURT: Anything else?

5 MS. KATZE: No, Your Honor.

6 MS. ONG: No, Your Honor.

7 THE COURT: All right. We're in recess.

8 (Proceedings adjourned at 5:24 P.M.)

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1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW MEXICO

3
4 UNITED STATES OF AMERICA,)

5 Plaintiff,)

6 vs.)

7 MICHAEL DAMEON BLACKBURN,)

8 Defendant.)

No. 14-CR-00129 WJ

SENTENCING HEARING, PART 2

9
10 CERTIFICATE OF OFFICIAL COURT REPORTER

11 I, Mary K. Loughran, CRR, RPR, New Mexico CCR #65, Federal
12 Official Realtime Court Reporter, in and for the United States
13 District Court for the District of New Mexico, do hereby
14 certify that pursuant to Section 753, Title 28, United States
15 Code, that the foregoing is a true and correct transcript of
16 the stenographically reported proceedings held in the
17 above-entitled matter on Thursday, June 22, 2017, and that the
18 transcript page format is in conformance with the regulations
19 of the Judicial Conference of the United States.

20 Dated this 7th day of August, 2017.

21
22
23 MARY K. LOUGHRAN, CRR, RPR, NM CCR #65
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